

No. 12437

United States
Court of Appeals
for the Ninth Circuit.

JAMES ANTHONY ALLEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Three Volumes
Volume II
(Pages 451 to 900)

Appeal from the United States District Court,
Eastern District of Washington
Northern Division.

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PAUL P. O'BRIEN,
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(Testimony of Joseph V. Grismer.)

Q. And Mr. Allen never indicated any interest to you at all in the Pilot just as the Pilot, separate from everything else?

A. Well, that was the nucleus of the whole thing.

Q. He indicated the interest of the Pilot as a member of this group in the central development?

A. The interest of the Pilot came first, and then that came [438] afterwards in the possibilities.

Q. But Allen wasn't the big shot in the Pilot, was he?

A. I don't know what you call the big shot.

Q. He wasn't the man that ran things?

A. He did the organizing.

Q. Wasn't Mr. Keane the over-all boss of everything?

A. I couldn't say that; he took care of the legal end.

Q. All right. Do you recall a stockholders' meeting of the Pilot Silver Lead held on August 7, 1948, in the assembly room of the Old National Bank Building, at 7:30 p.m.?

A. Yes.

Q. Do you remember being there?

A. Yes, golly yes.

Q. I want to read a statement that you made there and ask you if you made that. "Mr. Grismer: I don't believe I need any introduction to the Pilot because I was the original locator of the Pilot Mine, together with Bill Walker, in 1924. We packed up there the picks and drills and made the property what it is today. We of course were com-

(Testimony of Joseph V. Grismer.)

mon guys and a long way from knowing exactly how to handle things, but we finally ended up in incorporating the Pilot, and you might say promoting it. Very well. A good many people here bought stock on my reputation. I had a good mining reputation at that time. I haven't got quite as good now. Anyway, we turned this over to [439] that Board of Directors, the first Board, with the full intention and hopes that they would—well, figuring they would play fair with everyone. I went on as manager of the property. I am a little ahead of the game. Mr. Bentley cites figures that are supposed to be since October, 1945, to June, 1947. It took so long to get a certain amount of money. The company was not incorporated until January, 1946, and in June, 1946, the company was fully financed. Not a dollar has come in since. A lot of it went out. In August I started operation as manager of the property at a rate supposed to be at \$200.00 a month. September came around. I was not paid. I didn't care a heck of a lot. I thought I would let things run as long as we were going to make a mine out of it, and I found that a lot of bills were not paid. I then tried to enter the office of F. C. Keane, who was president and the whole cheese, you might say, of the Pilot." Did you say that? A. That was after the incorporation.

Q. "He and his secretary, Glynn D. Evans, were the officers and directors of the Pilot. I couldn't contact Mr. Keane. He was always in the habit of

(Testimony of Joseph V. Grismer.)

running away when I came near and cutting me off: 'Well, I will take care of it tomorrow,' and he called me pretty fancy names now and then, which was quite characteristic of him, and I [440] told him that these bills had to be paid. 'Well, how in hell do I know they are legitimate bills?' That is some more petty-fogging, I guess. I told him, 'Any time I send a bill, it is a legitimate bill. I wouldn't send it if it wasn't.' I said, 'If those bills are not paid next month, I will take action.' November came around and I was not paid as manager, and I am not paid to this day. December 10th came around and the bills were still not paid. I couldn't do anything with Pilot. I was not an officer. I was not a director of the Pilot. But prior to that, in the office of F. C. Keane, the only one I could contact was Mrs. Vermillion, and I was just trying my hardest to get things moving, and in the course of our conversation she once said, 'The bank deposits are in terrible shape.' That was enough for me to take action. As I said a minute ago, I couldn't take any action on the Pilot, but I was president of the Lucky Friday Extension, which was also in the hands of F. C. Keane." A. That's right.

Q. "Well, people say, 'Why in heck did you trust him?' I will tell you why. He was attorney for the Independence; he was president of the Independence Lead; he was attorney for the Clayton. They trusted him; why in hell shouldn't I? That is my answer, and I say, unfortunately. On

(Testimony of Joseph V. Grismer.)

December 12, after seeing that the bills were not paid on [441] the Pilot, I thought there was something radically wrong. I called a meeting of the Board of Directors of the Lucky Friday Extension, and that meeting was called at five o'clock because one of the members of the Board was working and was working overtime. At that meeting I told the Board the situation of things in the Pilot, and I told them that I just couldn't come to any agreement. I said, 'I can't get any statements, can't get nothing from Keane, as to the Lucky Friday or the Pilot,' and I said, 'I personally think there is something radically wrong and I will entertain a motion that F. C. Keane be discharged from the service of the Lucky Friday Extension as attorney for the Company and that his name be stricken from the bank,' and that motion was made and carried." Do you remember saying all that?

A. Yes, certainly.

Q. "Then the next motion was made and carried that the office be moved from its present location, which was in Mr. Keane's office, and I designated my own office as the office of the Lucky Friday Extension. That was carried. Then we were to move the books over immediately. Well, we went in and the then secretary, Glynn Evans, he showed us where some of the books were. All we got then was a stock ledger and a stockholders' list and the seal. The rest was in the safe. We would not enter the safe, and [442] that is all we moved

(Testimony of Joseph V. Grismer.)

over that night, but we had enough. We were in business, anyway. I put them in my office under lock and key. That night my good friend called me and called me a nice pet name. He said, 'You so and so, you burglarized my office,' and he said, 'You better have that stuff back by nine o'clock in the morning or I am going to have you arrested.' I told him, 'Well, I don't like that name connected with me, nor do I like the name burglars.' 'But,' I said, 'rest assured, Big Shot, there will be nothing back, and I will be there at eight o'clock waiting for you to arrest me.' " That's Keane you're talking about? A. Yes, sir.

Q. " 'Go to it.' But he wasn't there, and I never was arrested, not to this day, anyhow. Well, we started business. That is all we ever got out of that office, was the stock record and the stock register and the seal. To this day we haven't got a cancelled check of any kind there. He finally did send over a copy of the by-laws, a few little things like that that didn't matter any. Then I shut down the Pilot when I saw how things were and I could get no action, and I proposed, and my lawyer will testify, 'If you get one lawyer to sue another you are a genius.' Anyhow, I couldn't get to his office until about the first part of February. I figured he would be at his [443] office. I called the S.E.C. and they got after him, and after a little course of time I believe Denney got the condition of things, and he

(Testimony of Joseph V. Grismer.)

said there was about thirty-seven dollars or something in the bank.

“To this day we have no records of the company pertaining to the affairs of this company up to January 1, 1947, at the time all of this money disappeared. Not only did the Pilot money disappear but the Lucky Friday money disappeared. So I hired Mr. Wayne, who, unfortunately now is dead, as my attorney to try and get this thing going and get the records and so on, and he always threatened to start suit or one thing and another. And finally, we decided to run a bluff on him. That is when I called Mr. Allen in to help, because he knew Keane better than I did and perhaps could do something. I told him the situation. I said, ‘Can you do something?’ He said, ‘I will go ahead and try.’ He got interested and kept trying one way or another, which finally ended up—between Mr. Wayne and Mr. Allen they got the idea they were going to call a stockholders’ meeting, and they threatened Keane with that, that either he resign and appoint a new board or his whole board would be removed, and that we would call a meeting and expose him and we would appoint a new board anyway, and that is what induced Keane to resign. But, as I say, we never got any [444] records of any kind of the twenty-five dollars in the kitty.

“Sure, I say, there were creditors coming in. They was trying to foreclose on those different things, and that is how Mr. Wayne kept them off.

(Testimony of Joseph V. Grismer.)

He kept them quiet for quite a period of time, until such a time as this trusteeship was worked out. I gave pretty near all of my stock that I got for payment of my company into that trustee account to make these companies whole, for the simple reason, hadn't I done it I would have lost and all of my friends would have lost. As I see it, my friends have a chance to save their stock, because a receiver would have been appointed. Otherwise, everything would have been lost. But between my friends and Mr. Allen, we saved this stock by putting this stock in the hands of trustees to make this company whole, and in the meantime start work to get some new action on there, and finally got associated with Lead and Zinc Syndicate Company, and my thanks for my efforts, after owning that property and making it what it is, owning it for twenty-eight years and giving up my stock, is a good swift kick, a letter sent out to the public telling what a low down so and so am I, and the public will fall for it, and that is the reason for mostly all of this business here tonight. Our efforts, as I said, after giving up all of these properties—what [445] do we get out of it? That is why Mr. Allen is here. I asked him in. I hope that answers the question."

Did you make that speech at a stockholders' meeting? A. Pretty much that way.

The Court: Just a moment. We've gone over a little bit the appropriate time for recess. I am assuming you've finished this particular phase?

(Testimony of Joseph V. Grismer.)

Mr. Etter: Yes, your Honor, I have.

The Court: All right, we'll recess for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Cross-Examination

(Continued)

By Mr. Etter:

Q. Likewise at the stockholders' meeting, Mr. Grismer, do you recall making the following further statement: "I can tell you that during my ownership, including Mr. Walker back there, there was about \$40,000 spent on it. There was in the neighborhood of 2200 feet of work on it. A great deal of that was done by myself by hand work, and if you know what a mine is you know what hand work is. You know that is not child's play. I spent thousands of dollars of my own money to bring the property to what it is, and ninety per cent of the stockholders here now have more stock than I have, and as to what became of the money, to this day we haven't been able to get any records [446] as to what happened to anything. F. C. Keane kept them there and it is now under subpoena of the S.E.C. and we can't get it. We have made repeated efforts, asked the S.E.C. to turn those over to different parties. We always get a run-around, and

(Testimony of Joseph V. Grismer.)

no one has ever been able to find the exact amount of money that went any particular place, but it went out without the knowledge or consent of any of the Board of Directors." You made that statement? A. That's right.

Q. And this one too, answering a question: "Mr. Grismer: Yes. Have you the report on the Pilot? I prepared charges against F. C. Keane, and at that time I knew—I could see that it was going to be a whitewash, and Mr. Bentley will testify to the fact, I got about two hours' notice to appear. I got a subpoena, and I came off the job and appeared at one o'clock at the courthouse for the hearing—no, not the hearing; it was merely regarding the plea. I called up the prosecutor. I said, 'Now, just what is the nature of this thing?' 'Oh,' he said, 'we will just gather and set the bond,' and I said, 'That is all there is to it? There will be no hearing?' 'Oh, no, no. There will be no hearing. Of course, he can demand a hearing.' I knew darn well by the tenor of his conversation that already the case had been settled. I got on the phone and [447] called Mr. Bentley and asked him to come down and asked him to witness the whitewash of F. C. Keane. Isn't that the words I told you?" Did you make that statement? A. That is right.

Q. And this, further: "You asked the question awhile ago—I based this complaint, due to the fact that I couldn't get any books or anything. We did succeed in having a certified public accountant by

(Testimony of Joseph V. Grismer.)

Mr. Grismer, I'll ask you to examine it for just a moment.

A. Just what is it—oh, I see. Could you give me a general idea, maybe it would help along.

Q. Yes, all right. I'll ask you if that's your signature? A. That is my signature, yes.

Q. And did you swear to that in front of Therrett Towles, notary public, on or about the 15th day of February, 1949?

A. Just what is it all about? You can tell me quicker than reading it; give me a general idea, and I'd know. [450]

Q. Well, I'll read it to you, and ask you if you remember it. A. Just the general idea.

Q. I'll read this to you, Mr. Grismer, and then I'll ask you a question, with the permission of the Court.

The Court: You may proceed.

Q. This is in the case of F. C. Keane, plaintiff, versus J. A. Allen, J. V. Grismer and others, number 10224, in the District Court of the First Judicial District of Idaho, for the County of Shoshone.

(Whereupon, Mr. Etter read Defendant's Exhibit C for identification.)

Q. That is your signature?

A. Yes, sir, that is my signature.

Q. And the facts in this affidavit are the truth, are they, Mr. Grismer?

A. Very much the truth.

(Testimony of Joseph V. Grismer.)

Q. And you read this affidavit before you signed it? A. I did.

Q. And you signed it the 15th of February, 1949? A. That's correct.

Mr. Etter: I offer Defendant's Exhibit "C" at this time in evidence.

Mr. Stocking: No objection.

The Court: Exhibit C admitted.

(Whereupon, Defendant's Exhibit C for identification was [451] admitted in evidence.)

Q. When there were legal problems connected, Mr. Grismer, with the Pilot or the Extension, in the matter of quit claims, contracts, the handling of all legal matters that would go to incorporating a number of groups of claims into one group, and the like, who would you depend on for legal advice in all of these matters you've testified to?

A. F. C. Keane took the leading part in that, and I think he was assisted somewhat by Mr. Johnston.

Q. That's Mr. Elmer Johnston of Spokane?

A. Elmer Johnston, yes.

Q. Now, going back, Mr. Grismer, to the meetings, trying to direct your attention to the time as being a short period of time, a couple of days or so after the discussion that was had in the Metals Club of the Samuels Hotel, do you know about the time I mean, a few days after that discussion?

A. I didn't quite understand. .

(Testimony of Joseph V. Grismer.)

Q. Well, you remember when you were telling us about the suggestions about organizing a company, at which time Mr. Sekulic and Mr. Allen and those people were present? A. Uh huh.

Q. Then you told us that there was a subsequent meeting in the so-called Metals Club of the Samuels Hotel in Wallace? A. Uh huh. [452]

Q. Now, a few days after that, maybe the next day, I'm not quite sure, but a few days after that, didn't Mr. Sekulic request you go up and put location notices and papers up on these claims?

A. No, I don't believe—I'm sure that he didn't.

Q. Well, isn't it true that that very next day you and Mr. Lakes went up and located that property?

A. I wouldn't say the very next day, but shortly thereafter.

Q. And while you were up there locating that ground, the Lucky Friday, we're talking about—

A. Extension.

Q. —Extension, yes; while you were locating that ground, isn't it a fact that John Sekulic, who was associated with the Big Friday, and Judge Featherstone, who is likewise a director of the Big Friday, came up to you and talked to you, when you were up there on the ground? A. Yes.

Q. And while you were surveying there didn't they both assure you that a claim known as the Molly Number 3 was their claim?

A. I wouldn't say that they particularly men-

(Testimony of Joseph V. Grismer.)

tioned claim number 3 or so, but they asked what I was doing on their ground.

Q. On their ground?

A. On their ground, yes. [453]

Q. And what did they say then?

Mr. Stocking: I think we'll object to this again; this is the Big Friday, as I understood it.

The Court: Overruled.

A. Overruled?

Q. Did they come up, these gentlemen, and talk to you?

A. Yes, they asked me what I was doing on their ground. Well, I says, "I don't know which is your ground and which is not."

Q. You just said, "I'm supposed to be up here surveying and locating," isn't that right?

A. Yes, something to that effect.

Q. And they said the ground you were on there was their Salvatori claim, or something like that, didn't they?

A. I wouldn't know whether they mentioned the particular name. They let me know it was their ground.

Q. Didn't you check the records in the courthouse? A. Later on I did.

Q. And didn't you find there was a notice of intention to hold filed by Chas. Horning, as attorney and director of the Big Friday? A. And——

Q. And W. J. Emacio, as director?

A. That's right.

(Testimony of Joseph V. Grismer.)

Q. And after that you had some conferences with John Sekulic [454] and likewise Mr. Horning about that problem, didn't you?

A. I don't know; we had quite a few conferences; I don't recall whether there was anything particular on that.

Q. Now, isn't it true that Keane gave you a contract which was drawn by Keane and Horning between the Lucky Friday Extension and the Big Friday? A. Contract on what?

Q. The contract between the Big Friday and the Lucky Friday Extension for the advance of money by Lucky Friday Extension for the development of the shaft; didn't Keane give you the contract that he and Horning had prepared on that arrangement?

A. I was given a contract regarding development work and payment thereof, but exactly who gave it to me I can't recall, but presumably it came from Keane's office, because that's where everything was done.

Q. And it provided, did it not, that you or your company would pay over to the Big Friday, that is, Mr. Sekulic and Mr. Horning and Judge Featherstone and these other people who were interested, you would pay over a large amount of money for the development of their shaft and likewise exploration over into the Lucky Friday Extension ground?

A. That is right.

Q. Wasn't that the contract? [455]

(Testimony of Joseph V. Grismer.)

A. That was the contract presented.

Q. And you took that contract up to Mr. Allen and asked him about it, isn't that so?

A. No, Mr. Allen wasn't there. I took it home and read it, and called up Mr. Allen and told him I refused to sign it.

Q. You called Mr. Allen?

A. I called Mr. Allen.

Q. And you asked him about it?

A. I told him I refused to sign it.

Q. And Mr. Allen told you, as a matter of fact, it was too one-sided?

A. I don't know. It was my idea it was too one-sided.

Q. Didn't Mr. Allen tell you the contract was one-sided, and that the Big Friday was going to get all the benefit?

A. That was my contention, I know.

Q. And it was Mr. Allen's, wasn't it, when you took the contract to him?

A. Whether he made the particular statement I couldn't tell.

Q. You don't remember, but you wouldn't say he didn't, would you?

A. I wouldn't say he didn't, no.

Q. Now, do you recall, did Mr. Keane turn over to Mr. Horning a large block of the Lucky Friday Extension stock in your name for Horning and Mr. Sekulic and Judge Featherstone, who were directors of the Big Friday? [456]

(Testimony of Joseph V. Grismer.)

A. I had absolutely nothing to do with the handling of the stock after——

Q. I know, but do you know whether he did?

A. I don't know.

Q. Well, when you got the stock books, this is after you people took over from Mr. Keane and the others, when you got the stock book and examined them didn't the book disclose that the stock had been over-issued because of the issuance of the certificate to John Sekulic?

A. The secretary told me there was an over-issue, so far as I know.

Q. Yes, and the reason given was because of the issuance of the certificate to Sekulic, isn't that right?

A. Which it was, we didn't go into detail.

Q. But you found out that that certificate was held in Mr. Horning's office, didn't you?

A. Later on, yes.

Q. And that certificate had been handed over and Mr. Horning had it in his office, didn't he, this large certificate?

A. I didn't know it at the time, but later on it proved to be the fact.

Q. You went to Horning's office, though, didn't you?

A. Under instructions.

Q. You bet, and you told Mr. Horning you wanted the certificate back? [457]

A. Quite a number of them.

Q. And Mr. Horning gave you the certificate

(Testimony of Joseph V. Grismer.)

back? A. I signed a receipt, yes.

Q. So you found out that a certificate had been issued to Mr. Sekulic, and Mr. Horning had it, didn't you?

A. I presume that was in that bunch, yes.

Q. Do you remember how much it was?

A. Between five and six hundred thousand shares.

Q. Between five and six hundred thousand shares of the Lucky Friday Extension stock had been given to Mr. Sekulic and Mr. Horning had it, didn't he?

A. I wouldn't know who it was given.

Q. But Mr. Horning had it in his safe, didn't he?

A. Yes.

Q. And you got it back? A. I got it back.

Q. And that's the same Chas. Horning, attorney at law from Wallace, who testified here?

A. I wouldn't know, I didn't see him here.

Q. Yes, but do you know of any other Chas. Horning in Wallace, Idaho?

A. No, I don't. Must be the same man.

Q. Now, you had some pictures taken of the mine and you also had some pictures taken down in the main shaft of the Big Friday, didn't you?

A. That's right.

Q. And who arranged for the photographer to come up and take those pictures?

A. I wouldn't know.

Q. Elmer Johnston, didn't he, the Spokane attorney?

(Testimony of Joseph V. Grisner.)

A. I wouldn't know. The man appeared.

Q. How many visits did you make to Mr. Johnston's office in connection with legal matters?

A. I can only recall one visit.

Q. Don't you recall that there were two or three?

A. It is very likely, but I do not recall them.

Q. And you talked at least once with Mr. Johnston about an underwriting agreement?

A. I don't recall that.

Q. But did you talk to Mr. E. J. Gibson about it?

A. Oh, yes.

Q. And you and Mr. Gibson—Mr. Gibson operated a fairly large brokerage house, isn't that so?

A. That is right.

Q. And you know Mr. E. J. Gibson?

A. Know him well.

Q. And he recently disposed of his company to Hogle & Company? A. That's right.

Q. And he disposed of part of the stock?

A. That's right. [459]

Q. And you went to lunch with Mr. Gibson at the City Club? A. That's right.

Q. And you discussed the underwriting agreement? A. Correct.

Q. And at that time that you were discussing the underwriting agreement at the City Club both of you talked with Mr. James Newton of the Securities and Exchange Commission, isn't that so, during that day?

(Testimony of Joseph V. Grismer.)

A. I don't recall that we had a talk with Mr. Newton.

Q. I see. Now, the underwriting agreement that was handled by Pennaluna and Company, Mr. Grismer, did you have any direct connection with that, or did Mr. Gibson, or do you know who did?

A. I talked to Pennaluna whether they would handle the block.

Q. Did Mr. Gibson work with you on that, or was it just you?

A. No, I just went to Mr. Howarth, I think.

Q. You went to Mr. Chet Howarth and talked about this? A. Yes.

Q. And did you talk to Mr. Jerry O'Brien, who was then the owner of Pennaluna?

A. I believe it was Mr. O'Brien I talked to.

Q. Of course, Mr. Howarth was the manager?

A. Correct.

Q. It might have been either of them or both of them, is that correct? [460]

A. Yes, that's correct.

Q. And at the time that you talked with Mr. Gibson here in Spokane didn't you talk with him likewise in a general way about the formation of the Pilot Company, in which you were vitally interested, during your discussion?

A. I don't believe we did; I don't know whether we did or not.

Q. You don't remember?

A. We had a lot of friendly talk; I don't recall.

(Testimony of Joseph V. Grismer.)

Q. You had an interest, of course, in the Pilot group of claims for many, many years?

A. Yes.

Q. And as you say, and it's true, you had run about two thousand feet of tunnel by hand?

A. Well, caused to be.

Q. Did a lot of work on it all these years?

A. You bet.

Q. And you were interested in the Pilot group?

A. I certainly was.

Q. And still are? A. In a small way, yes.

Q. And it's highly possible that you could have talked to Mr. Gibson about that Pilot incorporation, isn't that so?

A. It's only natural. I was vitally interested in it.

Q. And isn't it true too that on one or two occasions, Mr. Grismer, when you were here in Spokane, that you talked to [461] Mr. Elmer Johnston a couple of times about your Pilot holdings or what became the Pilot, your different claims up there? A. Yes.

Q. And when you talked it over with Mr. Johnston this was before the formation of the Pilot Company, wasn't it? A. I don't remember.

Q. I mean, it was during the Lucky Friday Extension, the preparations for that issue, wasn't it, when you talked to Mr. Johnston about those claims?

A. Well, if I talked to Johnston I was sure to

(Testimony of Joseph V. Grismer.)

mention it, because that was foremost in my mind.

Q. Isn't it true when you talked to Johnston, and that was during the formation of the Lucky Friday Extension, Mr. Johnston wanted to make a direct deal with you, he wanted to take the Pilot over himself or some of his friends?

A. Oh, I don't know whether we come to a definite understanding.

Q. He proposed it?

A. He's always got some proposal.

Q. It could have been?

A. It could have very well been.

Q. And Mr. Johnston had an engineer working for him by the name of Nettinger?

A. Yes, he's employed by the Silver Dollar.

Q. Mr. Johnston represents the Silver Dollar, doesn't he? A. Yes.

Q. Mr. Nettinger had a report, did he not, on ground which included your claims, which later became the Pilot group?

A. He made that report for me about 1926.

Q. And you gave Mr. Nettinger, I think, the engineer, you gave him some stock in the Pilot later on for some of the excerpts in the report which were used in the prospectus?

A. I promised Mr. Nettinger stock if we ever incorporated or made a mine out of it, I'd see that he would be paid off, but that was not in payment for the report in the prospectus.

Q. I see. Now, after you and your associates, or

(Testimony of Joseph V. Grismer.)

Mr. Allen and you, and who else was it that took over the board of directors from Mr. Keane and his group, was it you and Mr. Allen and Mr. Mul-len? A. Yes.

Q. I see, and you elected officers at that time?

A. Yes.

Q. And that was in what, 1947 or 1946?

A. 1948—oh, no, I believe your '47 is right.

Q. Well, I'm not sure.

A. February, '47.

Q. Would that be, just to get the date, would that be possibly later, maybe in August, 1947, Mr. Grismer? [463] A. It was in 1947, I know.

Q. Yes, I'm just trying to get fairly close to it myself. Now, you had a meeting of the board of directors after you took over, is that right?

A. That is right.

Q. And then you found—you still didn't have the bank statements, did you? A. No.

Q. Or the bank checks? A. Nothing.

Q. Or the financial account? A. Nothing.

Q. You never knew anything about it and never could get it, could you?

A. Couldn't get anything.

Q. And there was a considerable amount of vendor's stock had been issued to you, hadn't it, originally? A. Not in the Pilot.

Q. No, in the Lucky Friday.

A. Oh, the Extension, you're talking about?

Q. Let me see here. One moment, your Honor.

(Testimony of Joseph V. Grismer.)

Make it this way: You found the affairs of the Lucky Friday and the Pilot both in the same shape, for the purpose of the record?

A. Yes, they were financially in about the same shape. [464]

Q. And you couldn't get the bank statements, as I said before, for either one, isn't that right?

A. For neither of them.

Q. And you couldn't get cancelled checks or any financial reports at all?

A. Couldn't get nothing.

Q. And you never did get any until Mr. Randall, who is a certified public accountant at Wallace, was permitted by the government to take the records and make an audit?

A. That is right.

Q. Isn't that correct?

A. That's correct.

Q. Directing your attention to the latter part of the year 1946, Mr. Grismer, that was somewhere around in November, I'd say, do you recall at that time that the Pilot, I believe it was, had made some negotiations for the purchase of some equipment and machinery, including a motor?

A. Yes.

Q. And at that time Mr. Sekulic, I think, had paid for it, hadn't he?

A. There was quite a controversy.

Q. Quite a mix up?

A. I know that Mr. Keane refused to pay for it.

Q. You couldn't get Mr. Keane to pay for it?

A. Couldn't get him to pay, and whenever I jumped him he [465] howled because I was spend-

(Testimony of Joseph V. Grismer.)

ing too much money on equipment and machinery.

Q. You needed the equipment, and Mr. Sekulic claimed that he had paid for it? A. Yes.

Q. What equipment was that?

A. I believe it was the electric motor and a mucking machine.

Q. And you needed, as I recall, about seven thousand dollars? A. In that neighborhood.

Q. And you personally went to Mr. Allen and told him about this situation, isn't that so?

A. Yes, Mr. Keane or Mr. Sekulic was riding me about it.

Q. You talked to Mr. Allen then about getting this money? A. Yes.

Q. And Mr. Allen gave this check for \$7,000 for the payment of that machinery, isn't that so?

A. I presume that is what it is for, about the date and the amount.

Q. And the machinery was then acquired, was it not, by the Pilot? A. Yes, it was.

Q. That was Plaintiff's Exhibit 18, and do you know whether or not the money was then given over to Mr. Sekulic, Mr. Grismer?

A. I wouldn't know. [466]

The Court: Is that Exhibit 18?

Q. That was; I think exhibit 18 was dated about November 20 of 1946. It was about two and a half or three months after that, was it, Mr. Grismer, or a number of months after that, you took over the Pilot from Mr. Keane?

(Testimony of Joseph V. Grismer.)

A. On December 12 I got action on the Extension, and I think it was January or February I got him out of the Pilot.

Q. That's right, and that was the course of events up until that time? A. Yes.

Q. So in the early part of '47 Mr. Keane and his group were out of the Pilot and out of the Extension? A. Yes.

Q. And you and Mr. Allen and Mr. Mullen, I think, were directors of both companies?

A. That is right.

Q. Is that correct? A. That's correct.

* * *

Q. Now, after these events in which you took over both these companies, did Mr. Allen make a number of advances to the Pilot and to the Extension that you know of, Mr. Grismer?

A. He made them for them, yes.

Q. And did you and Mr. Mullen do some work on those two properties or do some work for the corporation during the ensuing months after they had been taken over by your people?

A. Yes.

Q. And do you know how many months that was? A. It wasn't very long.

Q. And can you tell me who paid the expenses of the operation of the companies during that period of time?

A. Mr. Allen would send me a personal check. I wouldn't know where it came from, I presume it was his private funds. I deposited it to a trustee

(Testimony of Joseph V. Grismer.)
account and checked out from it. [468]

Q. And was Mr. Mullen operating the same way, or did you pay Mr. Mullen what was necessary?

A. I paid all about the same way.

Q. Have you any idea about what the amount of those advances were? A. No, I haven't.

Q. Did you and Mr. Allen have any discussion at that time, after you people came into control of the companies, with regard to disposing of any stock that the companies had at that time?

A. Which stock do you have reference to?

Q. Stock that you had on your certificate that hadn't been used or sold?

A. No, I'm sure we didn't.

Q. Well, do you know whether or not any of such stock was sold after you came into control?

A. I wouldn't know. He borrowed a hundred thousand off of me; what the date was I don't recall.

Q. And do you know whether that was sold?

A. I have no idea. I never got it back.

Q. You have no recollection of it being sold?

A. No.

Q. But you don't recall that you had any discussion about raising funds at that time? [469]

* * *

Redirect Examination

By Mr. Stocking:

Q. Mr. Grismer, there was some testimony given by you of your going into Mr. Horning's office and

(Testimony of Joseph V. Grismer.)

getting some stock that he held there, I think it was referred to as the Sekulic stock. Do you recall that portion of your testimony on cross-examination? [475] A. I do.

Q. Who if anyone instructed you to go to Mr. Horning's office and get that stock back?

A. Mr. Allen asked me to do so.

Q. Referring to Defendant's Exhibit C, which was the affidavit sworn to by you before Mr. Towles, do you know who prepared that affidavit, Mr. Grismer? A. I didn't prepare it, no.

Q. Was it prepared in this form when you were asked to sign it? A. I believe it was.

Q. Did you confer with someone about the contents of the affidavit? A. Did I what?

Q. Did you confer with someone about the contents of the affidavit before it was prepared?

A. No, I didn't.

Q. What were the circumstances under which this affidavit was signed?

A. Oh, I perhaps talked some of the aspects over, yes, but not in relation to the affidavit.

Q. You talked them over with whom, Mr. Towles or Mr. Allen?

A. With Mr. Allen and I believe Mr. Towles.

Q. And then the affidavit was prepared?

A. It was prepared. [476]

Q. And given to you for your signature?

A. That's right.

Q. I notice in the affidavit, the second paragraph,

(Testimony of Joseph V. Grismer.)

the following sentence: "That in 1945 he located the mining claims" and this is referring to yourself, "that were acquired by Lucky Friday Extension Mining Company that was organized by the plaintiff Keane in that year". In reading that over what did that word signify to you when you signed the affidavit, the word "organized" by plaintiff Keane?

Mr. Etter: I'm going to object to that question, your Honor; it speaks for itself.

Q. What was your interpretation of that word "organized"?

The Court: Overruled.

Mr. Emigh: Exception.

A. I presume it had reference to the organizing of the Extension.

Q. And by the word "organized" just what did you refer to that Mr. Keane had done?

A. Well, I suppose organizing means the incorporating of the company.

Q. Drawing articles?

A. Well, anything that would be referred to it, as far as I know, what his activities were.

Q. And at the time you read this over and you signed it and [477] swore to it, you believed that it was a substantially truthful statement, isn't that correct, Exhibit C?

A. Well, as far as my knowledge of legal terms and so on, I thought it was quite correct.

Mr. Stocking: That's all.

(Testimony of Joseph V. Grismer.)

Recross-Examination

By Mr. Etter:

Q. Just one or two questions. Mr. Grismer, counsel asked you or you stated in answer to counsel's question that you went over to Mr. Horning's office and requested the certificate, that is, the so-called Sekulic certificate, and that Mr. Allen told you to do that, that's correct, isn't it?

A. That is correct.

Q. Now, that was after you and Mr. Allen, or Mr. Allen at your request, had thrown Keane out of the company and had made them all resign, isn't that right?

A. I don't recall.

Q. Well, you were then an officer of the company and so was Mr. Allen, isn't that so?

A. I was an officer of the company, yes.

Q. And Mr. Allen was likewise an officer of the company?

A. I wouldn't recall; I'd have to look up the dates.

Q. Well, did Mr. Allen send you over to get that certificate before you got Keane out of office?

A. Why, no, it was after. [478]

Q. It was after you threw Keane out and had Mr. Allen's help that he asked you to go out and get that certificate?

A. It was after Keane was out of the office.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.)

(Testimony of Joseph V. Grismer.)

The Court: Just a moment; is there any reason why Mr. Hawkins should remain longer?

Mr. Etter: No reason on behalf of the defendant, your Honor.

The Court: Mr. Grismer is excused. Mr. Hawkins is excused.

RUTH NOLTING

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. State your name, please?

A. Ruth Nolting.

Q. And where do you reside? It's Miss Nolting, is it not? A. Yes. Spokane.

Q. How long have you been employed here in Spokane? A. About 25, 20—22 years.

Q. And you have been an employee of the Gibson stock brokerage firm? A. Yes.

Q. What is the—— [479]

A. E. J. Gibson & Company; I was with them for about fifteen years.

Q. And you were an employee of E. J. Gibson during the years 1945, 1946 and 1947, is that correct? A. Yes.

Q. What was your position there with Mr. Gibson's office during that time?

A. I was the secretary-treasurer of the company.

Q. That was a corporation, was it?

(Testimony of Ruth Nolting.)

A. Yes.

Q. You are familiar with the offerings of stock which were made by the Lucky Friday Extension and Pilot Silver Lead Mines, Inc., companies?

A. Yes, I was.

Q. What part did you play in connection with those offerings?

A. Well, I took care of the office work and letters that went out for transfers of stock.

Q. Mr. Gibson's firm, I mean this firm of Gibson & Company, was one of the underwriters for the issue?

A. Yes, they were.

Q. And were you then in charge of—you say you took part in this issuance of letters?

A. Well, I was taking care of the—part of the cashiering at the time, cashiering and sending out transfer letters and work of that type. [480]

Q. In connection with those offerings just exactly what transpired with relation to how the orders were secured from the investors and how the stock certificates were secured, and final delivery; could you give us that?

A. Well, a prospectus was made up and registered with the Securities and Exchange Commission.

Q. That was filed as an unregistered prospectus, was it not?

A. Yes, for unregistered stock, and each of the brokers participating were allotted so many shares of stock to sell.

(Testimony of Ruth Nolting.)

Q. And what was the procedure then after you received these prospectuses?

A. Well, every customer had to receive a prospectus when he purchased stock, and the prospectus was mailed out to our mailing list of customers with an order blank, and they could send it back to us for an order for this stock.

Q. You sent these prospectuses, then, to approximately how many of your mailing list, would you say?

A. I don't know. Our active list at that time as near as I can remember might be three thousand or ten thousand, I don't remember just how many were sent out, but we didn't send it out to the entire list, I don't believe, at that time.

Q. Was it sent to several different states in the Union? A. Yes. [481]

Q. And you say these orders would then come in from the customers? A. Yes.

Q. And then what was the procedure?

A. Well, they were usually accompanied by a check, and we just made out a confirmation, mailed it to the customer, and ordered the stock transferred from the transfer office.

Q. And where was the transfer office located?

A. The offices in these various issues that you mentioned were in Wallace.

Q. And then what was the procedure as far as getting certificates were concerned?

A. Well, they were mailed back to us, the new

(Testimony of Ruth Nolting.)

certificates registered in the clients' names, and they were then re-mailed to the clients from our office.

Q. From your office? A. Yes.

Q. Now, in connection with the certificates of Lucky Friday Extension Mining Company, I hand you Plaintiff's exhibit 51 and ask you if you can identify those letters as being the letters with which the certificates were received in your office?

A. Those are our customers, yes.

Q. And where did these letters come from?

A. Well, this would come from the Lucky Friday Extension [482] Mining Company, and it would come back with the stock certificates issued to our clients' names.

Q. The stock certificates listed in each letter would be accompanying the letter when it arrived in your office? A. Yes.

Q. And have you examined all of those letters and can you identify it and testify as to whether or not they were——

A. They are all our customers.

Q. ——received in your office through the mails?

A. Yes.

Q. They were. These are letters, exhibit 51 are letters which were furnished from your office file. is that correct? A. Yes.

Q. At our request. Handing you Plaintiff's Exhibit 19, I'll ask if you can identify—for identification, I'll ask if you can identify Exhibit 19?

(Testimony of Ruth Nolting.)

A. These are all our letters.

Q. They were all letters from your file?

A. Yes.

Q. And where did you receive those letters?

A. From the Pilot Company.

Q. In Wallace, Idaho? A. Yes.

Q. And where did you receive these, I mean where did you [483] obtain these letters?

A. Well, they would come by mail.

Q. They came by mail? A. Yes.

Q. And were they all in envelopes addressed to E. J. Gibson & Company of Spokane, Washington? A. Yes.

Q. And they were received here in Spokane, Washington, through the mails? A. Yes.

Q. And that is with respect also to the Exhibit 51 letters? A. Yes, that's right.

Q. Do you know about the time it takes for letters which were mailed in Wallace to be received in your office?

A. They should come in the next day, but they don't always come in. I mean mail is very irregular to and from Wallace.

Q. But it would be within a day or two days, usually? A. Yes.

Mr. Stocking: We'll now offer in evidence Plaintiff's Exhibit 19. Exhibit 51 has already been, and I'll say that these contain some indictment letters and some letters connected with the overt act counts, so that they're all mentioned in the

(Testimony of Ruth Nolting.)

indictment. They were identified by the witness Irene Vermillion as having been [484] mailed.

Mr. Etter: I'm going to object to the admission of these exhibits at this time on the ground that they're incompetent, irrelevant and immaterial in the present state of the record, no proper foundation has been laid, no connection has been shown between any of the exhibits identified and the defendant Allen under any count of the indictment charged in this case, it doesn't indicate that the defendant Allen was in any way directly or indirectly in connection with this transaction privy to any transaction contained in it purporting to relate to the indictment, and the mass therein contained, so far as the evidence now adduced, will merely lead the jury to conjecture and speculation.

The Court: Exhibit 51 has heretofore been admitted. The previous admission is ratified. As to Exhibit 19, I'm not too certain as to the testimony concerning two of these letters therein contained, which are not signed.

Mr. Stocking: The testimony was as to all of the letters that she had prepared them and mailed them, Irene Vermillion.

The Court: That portion of Exhibit 19 made up of signed letters is admissible at the present moment. I dislike breaking the exhibit up, and Exhibit 19, ruling [485] continues reserved until I can check my notes as to Mrs. Vermillion. You say

(Testimony of Ruth Nolting.)

she's the one who said that all of these letters, whether they're signed or not, were mailed?

Mr. Stocking: Yes. I'll ask one more question.

Q. (By Mr. Stocking): Were all of these letters in Exhibit 19 taken from your files and furnished to us? A. Yes, they were.

Q. So that all of these letters were received by you even though it appears that a letter dated May 29, 1946, does not contain a signature?

A. Yes, they're our customers.

Q. These were your customers. You recognize those names? A. Yes, and our nominee.

Q. And the nominee of yours is what?

A. B. A. Fogelquist is a nominee of ours.

Q. That's common practice when stock is taken by a broker, they put it in the name of a person as nominee? A. As nominee, yes.

Q. And another letter here of May 29, 1946, does not appear to have a signature. That was also received in your office?

A. Yes. Yes, those are some of our people.

Q. And you have also furnished us with the carbon copies of the letters sent to the brokers containing these same lists of names, is that correct? [486] A. Yes.

Mr. Stocking: We'll renew the offer. If the Court desires, we could designate those two letters of May 29, 1946, as separate exhibits in order that the Court could check his notes further. I think that the receipt of them, though, is——

(Testimony of Ruth Nolting.)

The Court: It doesn't make any difference whether I accept that today or tomorrow?

Mr. Stocking: No.

The Court: Well, all right.

(Whereupon, Prospectus of Pilot Company was marked Plaintiff's Exhibit No. 68 for identification.)

(Whereupon, Prospectus of Extension Company was marked Plaintiff's Exhibit No. 69 for identification.)

Q. (By Mr. Stocking): Can you identify Plaintiff's 68? A. Yes.

Q. What is it?

A. The prospectus for the Pilot offering.

Q. This is the prospectus that was mailed out to your customers? A. Yes, it was.

Q. In connection with the Pilot offering.

Mr. Etter: What's the number of that?

Q. 68. Can you identify Plaintiff's 69? [487]

A. Yes, that's the prospectus for the Lucky Friday Extension.

Q. And can you identify that as the prospectus that was mailed out to your customers?

A. Yes, it is.

Mr. Stocking: We'll offer these in evidence, 68 and 69.

Mr. Etter: The defendant has no objection to the admission of Exhibits 68 and 69.

(Testimony of Ruth Nolting.)

The Court: Exhibits 68 and 69 are admitted.

(Whereupon, Plaintiff's Exhibits No. 68 and 69 for identification were admitted in evidence.)

(Whereupon, Gibson ledger sheet, account Helen Allen, was marked Plaintiff's Exhibit No. 70 for identification.)

Q. (By Mr. Stocking): I hand you what has been marked Plaintiff's Identification number 70, and ask you if you can identify that as a record of E. J. Gibson Company? A. Yes, it is.

Q. And what record is it?

A. It's our bookkeeping record, our original bookkeeping record.

Q. For what account?

A. For Helen Allen.

Q. Do you know who Helen Allen is?

A. Yes. [488]

Q. Who is Helen Allen?

A. Mrs. Jim Allen.

Q. Is that the wife of the defendant Allen?

A. Yes.

Q. And do you know who opened that account in the name of Helen Allen?

A. No, I don't.

(Whereupon, Gibson ledger sheet, account Helen Jorgenson, was marked Plaintiff's Exhibit No. 71 for identification.)

(Whereupon, Gibson ledger sheet, account

(Testimony of Ruth Nolting.)

B. A. McLean, was marked Plaintiff's Exhibit No. 72 for identification.)

Q. (By Mr. Stocking): I hand you Plaintiff's Exhibit 71 for identification and ask you if you can identify that?

A. That's Helen Jorgenson's account.

Q. And that's a record of her account with your corporation? Yes.

Q. And do you know who Helen Jorgenson is?

A. Well, I did when I found out recently. I didn't know at this time who Helen Jorgenson was.

Q. Well, do you know now who Helen Jorgenson is?

A. Well, I understand it's Mrs. Allen's maiden name.

Q. Do you know who opened that account in Helen Jorgenson's name?

A. No, not at that time. [489]

Q. I hand you Plaintiff's identification number 72, and ask you if you can identify that?

A. That's B. A. McLean's account.

Q. B. A. McLean's account? A. Yes.

Q. Do you know who opened that account?

A. No, I don't.

Q. I now hand you Plaintiff's Exhibit 48, which is identified as E. J. Gibson checks made out to—five made out to B. A. McLean and one made out to cash, and ask if you can identify the checks in that exhibit?

The Clerk: That's for identification.

(Testimony of Ruth Nolting.)

Q. Yes.

A. Those are all our checks.

Q. Issued by your company?

A. By the company at that time.

Q. Now, with regard to the account for B. A. McLean, can you state if these are the checks which were issued in connection with the payments made on the B. A. McLean account?

A. Yes, they are.

Q. Those are the checks?

A. Yes, all of them.

Q. What about this first check that was issued to cash in that account, and bears no endorsement?

A. Customers frequently come in and ask us to pay cash. If we have cash on hand we make out a check to cash and pay cash in payment of the stock, and when they deliver the stock we give them the confirmation and the cash.

The Court: Does the jury hear? You're not talking to this attorney; you're talking to these fourteen jurors.

Mr. Stocking: I think you had better give that answer again.

A. Well, if a client comes in with stock, if he asks for cash and we happen to have cash, or send to the bank for it, we give him cash in return for his stock, and a receipt. That was what we did at that time, and if he asked for a check we gave him a check.

Q. Do you have anything to indicate to whom

(Testimony of Ruth Nolting.)

this check made out to cash, January 20, 1947, in the amount of \$2,238.95 was given to?

A. No. If the stock was delivered on that account with a confirmation or the receipt that we had issued, cash or a check was issued against it.

Q. And it could be presented to some other person than B. A. McLean if the stock was brought in by some other person than B. A. McLean?

A. That's right, if the stock and the confirmation were brought in. [491]

Mr. Stocking: We'll offer in evidence Plaintiff's 72 and Plaintiff's 48, in the B. A. McLean account, and checks made out on that account identified as having been endorsed either to the account of James A. Allen or endorsed by J. A. Allen, that is as to five of the checks, together with B. A. McLean's testimony regarding Mr. Allen's statement to her about this account.

Mr. Etter: I'm going to object to the Exhibit 72 on the ground that an improper foundation has been laid. It's not connected up in any way to prove any allegation of any count in the indictment against James A. Allen, nor does it show, even what counsel has stated, any privity of transaction of the defendant as related to any count in the indictment; it's incompetent, irrelevant and immaterial at this time; that's as to 72, and I want to add further along with that objection, to the Exhibit marked 48, that on the face of the exhibit each and every check so designated, beginning with

(Testimony of Ruth Nolting.)

January 20, 1947, and going through March 21, 1947, is incompetent, irrelevant and immaterial to prove any issue made by this case as to the joint concert alleged in counts one to seven of the indictment, including those, if the Court please, on mail fraud, security fraud and conspiracy, and on the ground the evidence has already disclosed and there's no contradiction thereto that there couldn't have been any joint [492] concert or action between the defendants after the witness Grismer and Allen the defendant had thrown out, if you call it that, or demanded and secured the resignation of Mr. Keane, who is charged as an actual accomplice in all the general counts of the indictment running up to the present time, and that these on no theory can prove any count set forth in that indictment, beginning January 20, 1947.

The Court: What about concert of action between Mr. Allen and Mr. Grismer?

Mr. Etter: There is no allegation there was any concert of action between them, and as to Mr. Grismer, six counts alleging such concert of action have been dismissed.

The Court: That makes no difference. It is my understanding that if Mr. Grismer and Mr. Allen were in a conspiracy, that that's sufficient to convict even though there was a larger conspiracy which was divided and broken when Mr. Grismer and Mr. Allen on one side and Mr. Keane on the other parted company. Now, is there any contention on

(Testimony of Ruth Nolting.)

your part that it's necessary that the evidence prove more than that Mr. Allen conspired with Mr. Grismer?

Mr. Etter: It certainly is, on this ground, that the indictment, if the Court please, as to every count alleges prior to June 1, 1945, and continuing to the date [493] of this indictment, naming each and every one of the defendants as being co-conspirators with no allegation at all made that there was ever any conspiracy, so-called, existing between any two separate defendants beginning at any particular time, but that it was continuing conspiracy between all three.

The Court: Well, counsel, the law is long established that if the government alleges a conspiracy between ten people and only proves it between two, that that's sufficient. The government is not required to prove that the conspiracy was as large as it alleged. It must prove beyond all reasonable doubt, where there's a conspiracy, that the one tried conspired with one or more other persons, but it's not essential that the government establish that the conspiracy was all-inclusive, nor that some person did not withdraw from the conspiracy at a certain time, so it would seem to me that under the law as I understand it of conspiracy, that your objection is not meritorious.

Mr. Etter: I take exception on the further ground that there's no connection of these checks on their face or in any other way or of the testi-

(Testimony of Ruth Nolting.)

mony developed so far with the defendant Allen.

Mr. Stocking: I'm going to state to the Court that they're offered also under the theory that the indictment [494] alleges that the defendants disposed of large amounts of the promotion stock of Extension and Pilot after the price of the stock had been raised, the market value of the stock had been raised through their creation of appearance of activity at the mining properties.

The Court: Exhibits 72 and 48 are admitted; objections overruled.

Mr. Etter: Exception.

The Court: Exception noted.

(Whereupon, Plaintiff's Exhibits No. 48 and 72 for identification were admitted in evidence.)

(Whereupon, Gibson checks to Allen were marked Plaintiff's Exhibit No. 73 for identification.)

Q. (By Mr. Stocking): I hand you Plaintiff's identification 73, and ask you if you can identify that in connection with the Helen Allen account, plaintiff's for identification number 70, identify the checks in that exhibit 73?

A. These are E. J. Gibson Company checks.

Q. And can you further identify them?

A. They're in payment of this account, yes.

Q. They're in payment of the Helen Allen account?
A. Yes.

Q. Now, you'll notice that some of the checks

(Testimony of Ruth Nolting.)

are made to J. A. Allen and some of the checks are made to Helen A. [495] Allen, but they're all in payment of this Helen Allen account, is that correct? A. Yes.

(Whereupon, summary of sales of Extension stock, Helen Allen account, to Gibson Co., was marked Plaintiff's Exhibit No. 74 for identification.)

Q. Now, does the Helen Allen account, Plaintiff's exhibit 70, disclose the sales for that account of Lucky Friday Extension Mining Company stock?

A. Yes.

The Court: What was that question? Read it, please, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

Q. The answer was yes? A. Yes.

Q. And have you made up a compilation of the number of shares, the dates of sales, the amount per share, and total amount for the number of shares sold on each date, together with the total amount of the number of shares sold in that account and the total dollars paid, or total value of the shares sold in that account of the Lucky Friday Extension Mining Company stock? A. Yes.

Q. And did you make that up from the records of E. J. Gibson [496] & Company? A. Yes.

Q. And is that your compilation, this Plaintiff's exhibit 74? A. Yes.

(Testimony of Ruth Nolting.)

Mr. Stocking: We'll offer Plaintiff's 70, 73 and 74 in evidence. I'll ask one question to clarify this Exhibit 73, which are the checks.

Q. Those checks of course contain payments for the sales of stock other than Lucky Friday Extension which were carried in that account, is that correct?

A. Yes, anything to balance the account.

Q. Yes, but the total amount of sales of Lucky Friday Extension which went through that account are shown on the compilation which you prepared?

A. Yes, that's right.

Mr. Etter: I'd like to object to the admission of all or any of these exhibits, your Honor, on the same grounds as previously made to the last exhibit. My throat is getting bad on me.

The Court: Is the compilation, exhibit 74 for identification, wholly concerned with identification exhibit 73 and identification exhibit 70?

Mr. Stocking: Yes; that's correct, is it not?

A. Yes.

Mr. Stocking: The only thing is that the other two exhibits are more inclusive. They include other stock transactions, but they're the basis of the compilation.

The Court: What is the total of the checks in exhibit 73 for identification?

Q. Did you total those checks?

A. I don't think I did. I believe the list is totalled, but not the checks.

(Testimony of Ruth Nolting.)

Mr. Stocking: The offer of the checks, if the Court please, will be limited, if the other exhibits are admitted, for the purpose only of showing the name of the payee and the names of the endorsers. That's the purpose of it, of course; the checks do cover other items in the Helen Allen account.

The Court: I was wondering about how much they represented?

Q. Is there some way you could tell?

A. I think I could.

Mr. Stocking: I think she could tell by looking. Will you point to the items that are——

The Court: I don't wish the record to be confused. If she wants to take a pad——

A. Well, there's \$41,908.00 of these checks are for Lucky Friday Extension.

The Court: Well, what's the total amount? Just a [498] moment; I don't want her to write on an exhibit.

Mr. Stocking: She's writing on a scratch pad.

A. The checks total \$53,578.00.

Q. And 90——

A. And 90 cents, and the list totals \$41,908.84.

The Court: All of the checks then were some \$53,000?

A. Yes.

The Court: And of the \$53,000, \$41,000——

A. \$41,900——

The Court: ——represented Extension?

A. Yes.

(Testimony of Ruth Nolting.)

The Court: Then there was about eleven or twelve thousand dollars in addition?

A. Yes.

The Court: Let me see the exhibits now. Objections overruled.

Mr. Emigh: Exception.

The Court: Exhibits 70, 73 and 74 admitted.

(Whereupon, Plaintiff's Exhibits 70, 73 and 74 for identification were admitted in evidence.)

Mr. Stocking: I'll make a brief reference to Exhibit 74, headed "Lucky Friday Extension Sales made by——"

The Court: Just a moment. With respect to Exhibit 74, Exhibit 74 is merely a compilation by the [499] witness. The jury is not bound by that compilation, and has a right to make its own compilation if it wishes. It can use that compilation as an aid to the jury if it desires. If the compilation differs from what the exhibits show, the jury are to disregard the compilation. It's just a measuring stick that you can use if you please. If you come to the conclusion there's a mistake in the measuring stick, don't use it.

Mr. Stocking: This is to indicate Lucky Friday Extension sales made by Helen Allen to E. J. Gibson & Company beginning with July 2, 1946, and running through December 28, 1946, a total of 265,000 shares disposed of at various prices ranging from 31 cents a share down, total dollars \$41,908.84.

Q. (By Mr. Stocking): On that exhibit, Miss

(Testimony of Ruth Nolting.)

Nolting, that year date of 1946 at the head of the exhibit carries through for the entire exhibit?

A. Yes.

Q. So that the last date is December 28, 1946, is that correct?

A. Yes, that's right.

(Whereupon, Gibson checks to Helen Jorgenson were marked Plaintiff's Exhibit No. 75 for identification.)

Q. Now, handing you Plaintiff's 75, can you identify that in [500] connection with the Helen Jorgenson account, Plaintiff's 71?

A. These are the four checks in payment of Helen Jorgenson's account.

Mr. Stocking: We'll offer in evidence the plaintiff's 71 and plaintiff's 75.

Mr. Etter: Object to both of these exhibits on the grounds previously stated, your Honor.

The Court: I doubt, counsel, if there's been a sufficient identification by this witness as to Helen Jorgenson being the wife of the defendant. I think all she said was she understood that was her maiden name.

Mr. Stocking: We'll connect it up with further evidence, your Honor.

Mr. Etter: We'll stipulate that it's his wife, your Honor.

The Court: You'll stipulate it?

Mr. Etter: Yes, we will.

The Court: Exhibits 71 and 75 admitted; objection overruled.

(Testimony of Ruth Nolting.)

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 71 and 75 for identification were admitted in evidence.)

The Court: It is stipulated that Helen Jorgenson is the maiden name of the wife of the defendant Allen, is [501] that correct?

Mr. Etter: Beg your pardon?

The Court: It is stipulated by the defense that Helen Jorgenson is the maiden name of the wife of the defendant Allen?

Mr. Etter: That's correct, sir.

The Court: All right.

Direct Examination

(Continued)

By Mr. Stocking:

Q. Now, Exhibit 71 shows only Lucky Friday Extension stock was sold through this account, is that correct? A. Yes.

Q. And these four checks of Exhibit 75 were given in payment for the stock which was sold?

A. That's right.

Q. These are checks of E. J. Gibson Company to Helen Jorgenson, \$2125.00, \$1112.50, \$2100.00, and \$1199.75. The first check is dated November 19, 1945, the second November 21, 1945, the next December 4, 1945, and the last check is undated, but shows that it was—bears a bank stamp of August 1, 1946. From your records could you tell

(Testimony of Ruth Nolting.)

what the date of the issuance of this last check, the \$1199.75 check, would have been?

A. July 29, 1946.

(Whereupon, Gibson in and out ledger was marked Plaintiff's Exhibit No. 76 for identification.) [502]

Q. Handing you Plaintiff's exhibit 76 for identification, can you identify that, please?

A. These are the original records of the certificate in and out book.

Q. For what stock?

A. For Lucky Friday Extension.

Q. And they're of the E. J. Gibson & Company?

A. Yes.

Q. Do they contain in them, then, the numbers of the stock certificates connected with the sales of the accounts to which we have just referred?

A. Yes, they do.

Mr. Stocking: We'll offer this in evidence. It's for the purpose of being able to trace the stock certificate numbers, for Mr. Denney's computation.

Mr. Etter: The defendant makes the same objection as to the preceding exhibits, insufficiency of identification.

The Court: Let me see that. I'd like to have all the testimony of the witness read with respect to Exhibit 76.

A. In and out book; certificates coming in are all registered in a book, and when they are delivered to clients they are registered out of the same book.

(Testimony of Ruth Nolting.)

(Whereupon, the reporter read the preceding questions [503] and answers commencing with the question "Handing you Plaintiff's exhibit 76 for identification, can you identify that, please?" and ending with the answer "Yes, they do.")

The Court: As I understand it, the purpose of these certificates are the basis for testimony by another witness?

Mr. Stocking: That's correct, your Honor, identifying the certificate numbers.

The Court: Well, I do not know that it's necessary that they be admitted. At least at this time I'm going to reserve ruling.

Mr. Stocking: I presume if they're available in the courtroom and have been offered it would be sufficient.

Q. (By Mr. Stocking): Now, referring to Plaintiff's exhibit 1, will you identify those checks, please?

A. These are the checks in payment of the Lucky Friday Extension stock, made to the company.

Q. In connection with the corporation's public offering——

A. Yes.

Q. ——concerning which E. J. Gibson was an underwriter?

A. That's right.

Mr. Stocking: We'll now offer or re-offer Plaintiff's Exhibit 1. Do you want to see these?

Mr. Etter: We'll make the same objection as

(Testimony of Ruth Nolting.)

heretofore [504] made to Plaintiff's exhibit 1, on the ground that it's incompetent, irrelevant and immaterial at this time to prove any allegation set forth in any count of the indictment as against the defendant Allen. At the same time, we don't believe at this time either there's been a proper foundation laid; it doesn't appear at this time in view of the evidence it's material to any issue with regard to the action pending; incompetent, irrelevant and immaterial.

Mr. Stocking: They have previously been identified by Irene Vermillion as having been banked, endorsed and banked into the Extension Company account.

The Court: Exhibit 1 admitted.

Mr. Etter: Exception.

The Court: Objection overruled.

(Whereupon, Plaintiff's Exhibit No. 1 for identification was admitted in evidence.)

Q. (By Mr. Stocking): I hand you Plaintiff's exhibit 13, and ask you if you can identify that?

A. That is a check written to the Pilot Silver Lead Company for E. J. Gibson Company's stock sold as underwriter.

Q. And that was for the entire——

A. Entire 400,000 shares.

Q. ——their entire underwriting?

A. Yes. [505]

Q. \$40,000. Now, this is made out to Pilot Silver

(Testimony of Ruth Nolting.)

Lead Company. Was there any such company that you were dealing with at that time?

A. Well, that was the name of the—that was the offering of Pilot Silver Lead Company stock.

Q. Well, now, the correct name is Pilot Silver Lead Mines, Inc.

A. The cashier was probably in a hurry and just wrote Company, because it's awfully hard for the cashier to remember the names of a hundred or so companies, whether it ends in "Inc." or "Co."

Q. But you're positive that's a check to Pilot Silver Lead Mines, Inc.?

A. Yes, that's the only name of that kind around here.

Mr. Stocking: I just wanted to clear that up. We'll offer Exhibit 13.

Mr. Etter: Make the same objection, on the ground that there's no connection shown as between this exhibit and anything material or relevant as it relates to the counts of the indictment concerning the defendant Allen.

The Court: Let me see it.

Mr. Stocking: The exhibit was identified by the banker Kraemer as coming into his bank, and part of it going to the Coeur d'Alene Consolidated Mining Company account, of which Mr. Allen was identified as the president. [506]

The Court: Exhibit 13 is admitted.

Mr. Etter: Exception.

The Court: Objection overruled.

(Testimony of Ruth Nolting.)

(Whereupon, Plaintiff's Exhibit No. 13 for identification was admitted in evidence.)

Q. (By Mr. Stocking): I now show you Plaintiff's Exhibit 31, and ask if you can identify—and 31-a, and ask if you can identify those two exhibits?

A. Two checks to James Gyde.

Q. Yes. Do you recall when—these were issued by E. J. Gibson & Company? A. Yes.

Q. And for what purpose?

A. I think that was part of the stock that we received on the underwriting. I haven't seen the prospectus for a couple of years, but it seems to me that was part of the stock we were allowed to take in addition to the other allotment.

Q. In other words, the Gyde stock was covered by the prospectus? A. Yes.

Q. And would you know how many shares of stock that would be for, at the price you were paying for the stock?

A. I think it was ten cents, wasn't it? [507]

Q. Yes.

A. That would be 145,000 shares. I think that's right.

Q. Yes, it was 10 cents net to the company.

A. Yes.

Mr. Stocking: We'll offer in evidence 31 and 31-a.

Mr. Etter: I'm going to object to the admission of these two exhibits on the grounds previously

(Testimony of Ruth Nolting.)

stated, and with the further statement that the testimony of Mr. Gyde did not indicate that these two exhibits are in any way—or did not connect up in any way these two exhibits with the defendant Allen. He specifically stated that what transaction he had was with Keane, that the statements were made by Keane, that the checks or money or whatever was concerned was handled by Keane, and that at this time there's no proper foundation laid to prove any count of the charge laid in the indictment against the defendant Allen; incompetent, irrelevant and immaterial.

Mr. Stocking: The exhibit 31, Mr. Kraemer, the banker, testified \$5,000 of exhibit 31 went in to purchase this \$25,000 cashier's check, and into the account of Coeur d'Alene Consolidated. Exhibit 31-a, Mr. Gyde as to exhibit 31-a and 31 both, Mr. Gyde testified that the arrangement as to the turning back of his stock and how much compensation he would get was made by both the defendant Allen and the defendant Keane. In any event, [508] Gyde's transactions with the defendant Keane would make this admissible, under our theory.

The Court: The objection is overruled; Exhibits 31 and 31-a admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 31 and 31-a for identification were admitted in evidence.)

(Testimony of Ruth Nolting.)

Mr. Stocking: You may cross-examine.

Cross-Examination

By Mr. Etter:

Q. Miss Nolting, did you talk with any individual prior to the organization of the Lucky Friday about its organization or underwriting?

A. No.

Q. That was done by Mr. Gibson, I believe, was it not?

A. Well, Mr. Gibson had very little to do with it. Elmer Johnston handled all our legal end of it, and the prospectus.

Q. But I mean the question of the underwriting, the discussion with any of the people representing this company was done by Mr. Gibson?

A. It was probably done by Mr. Gibson and myself, but there was very little—there was several underwritings coming up at this time, and we took them on as they came, and Mr. Johnston handled most of that for us.

Q. And that would be true likewise of the Pilot?

A. Yes.

Q. You never had any discussion yourself with Mr. Allen about Lucky Friday Extension?

A. No.

Q. Or Pilot? A. No.

Q. Mr. Allen has been an account of yours for a great number of years?

A. I believe so, since about 1939 or 1940, something like that.

(Testimony of Ruth Nolting.)

Q. And you've been employed and were employed by Mr. Gibson's company at that time and since, Miss Nolting? A. Yes.

The Court: Do I understand the witness is still employed by E. J. Gibson & Company?

Q. Yes, your Honor, except that E. J. Gibson has sold to——

A. I am not employed there now. I have no connection with the company now, but you said "since"; I thought you meant since 1939.

Q. That's correct, but am I correct in saying that Mr. Gibson sold his company to Hogle and Company? A. Yes.

Q. And that is the same company that he owned for years?

A. He sold his active business, but not the corporation.

Q. And are you still employed by Hogle & Company? [510] A. Yes.

Q. And Mr. Allen was a client of Mr. Gibson's brokerage business for a great number of years while you were employed by him?

A. Yes.

Q. But you never had any discussion with him about Pilot or Lucky either one? A. No.

Q. At its organization or later on?

A. Not that I recall.

(Whereupon, promissory note Allen to Chelde, 2/15/46, for \$10,000, was marked Defendant's Exhibit "D" for identification.)

(Testimony of Ruth Nolting.)

Q. Miss Nolting, handing you Defendant's "D" for identification, would you just tell me if you recognize that instrument?

A. That's a \$10,000 note.

Q. And do you recognize the writing on the back?

A. Yes.

Q. I'll ask you at this time, is that your signature which appears thereon, Miss Nolting?

A. Yes.

Q. You've been associated in this capacity as an employee of brokerage houses for a great number of years, have you not, Miss Nolting? [511]

A. Yes.

Q. And I think you were, what was it, the manager, weren't you, of Mr. Gibson's business the past few years?

A. Well, no, I wasn't the manager. Mr. Gibson had a coronary in 1945, early in the year, and he was in the hospital and under nurse's care most of the year, and I took over a lot of his duties at the time.

Q. And you're well acquainted with practices in the brokerage business, I would assume?

A. Yes.

Q. Do you know, Miss Nolting, whether in your experience it's a usual or an unusual thing to use persons or names other than your own on your brokerage account?

A. Just how do you mean, on trading under other people's names?

(Testimony of Ruth Nolting.)

Q. Yes.

A. Well, a great many men do it when they don't want their wives to know they have an account.

Q. That's right, and is it an unusual or a usual thing to deal in street stocks in trading in the brokerage business?

A. They used to do it a great deal more than now, because so many people have lost certificates through assessment sales by not having their names registered with the company, that we made it a practice the last few years I [512] was with the corporation to transfer all clients' stocks to their names, or tried to, but there are a great many street traders.

Q. And customarily the past few years, as you say, it has been a usual thing to do trading back and forth in street stock?

A. Local people do; out of town clients we almost invariably transferred.

Q. The purpose, of course, in transferring and sending it in to the corporation for transfer is to prevent the sale of stocks, assessment sale for delinquency in not paying the assessment?

A. That's right.

Q. And many of these mining companies operating throughout the Inland Empire and in the Coeur d'Alene district are assessable companies?

A. The majority are, yes.

Q. So it's been your practice to advise that those

(Testimony of Ruth Nolting.)

transfers be made, rather than carried in other names? A. That's right.

Q. But there is nothing unusual, there hasn't been the past few years, about carrying stock in street names? A. No, there hasn't been.

Mr. Etter: That's all. [513]

Redirect Examination

By Mr. Stocking:

Q. When you speak of stock in a street certificate you mean where the stock is carried in the name of a nominee of the brokerage house?

A. No, not necessarily. There are stock certificates that have been floating around for fifteen years that have never been registered outside of the original stockholder. When a company is non-assessable and isn't paying a dividend, some people don't think it's necessary to pay the amount of money, there's usually a dollar or so registration fees and tax and so forth; they just take it as it is and carry it in their box in that street form. The signature has been endorsed and guaranteed by a broker or a bank, and is negotiable.

Q. That's what I meant, it's usually guaranteed by a broker or bank?

A. Yes, or if it's the signature of a company, and the nominee is known, it isn't even necessary to have the guarantee.

Mr. Stocking: I see. That's all.

(Whereupon, there being no further questions, the witness was excused.)

The Court: There will be a ten minute recess.

(Short recess.)

(All parties present as before, and the trial was [514] resumed.)

IVA COMINI

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. Iva Comini.

Q. Where do you reside?

A. Samuels Hotel—oh, Wallace.

Q. Wallace, Idaho? A. Wallace, Idaho.

Q. What is your business?

A. Desk clerk at the Samuels Hotel.

Q. And how long have you been occupied by the Samuels Hotel?

A. Well, I was there for two years, and then I was gone a year and eight months, and I've been back there three months.

Q. Referring to August, 1945, were you there at that time?

A. You'll have to speak a little louder. I'm getting a little deaf.

Q. In August of 1945, were you employed at the hotel at that time? A. Yes.

(Testimony of Iva Comini.)

(Whereupon, register sheets, Samuels Hotel, were marked Plaintiff's Exhibit No. 77 for identification.) [515]

Q. I'll hand you Plaintiff's identification number 77, and ask you to look at that and state what that is. What is that? What are those two sheets?

A. These are register sheets.

Q. What do they show?

A. They show when a person registered in the hotel, what date, what room they occupy during their stay.

Q. Does that identification 77 show the registration of the defendant J. A. Allen—of one J. A. Allen——

Mr. Emigh: Just a minute. We'll object that the exhibit will be the best evidence. We ask that the exhibit be identified as to the keeping of that exhibit and so forth, and then it's for the court to determine whether or not it purports even to show such a thing, and not for this witness to testify what her conclusions are as to what the register shows.

The Court: Overruled.

* * *

Q. (By Mr. Erickson): Will you state whether or not the name of a J. A. Allen appears upon that register? A. Yes, sir, it does.

Q. And for what date?

A. August 6, 1945.

(Testimony of Iva Comini.)

Q. Is that the registration that the hotel guest signs when he enters the hotel?

A. Yes, sir, it is.

Q. Does it show any other registration for a J. A. Allen for a later date in August, 1945?

A. I can only find one here, on August 6. Yes, here's one, August 27.

Mr. Erickson: I offer 77 in evidence.

Mr. Emigh: To which exhibit, may it please the Court, the defendant objects on the ground and for the reason the same is not properly identified, and for the second reason that the same is incompetent, irrelevant and immaterial to prove or tend to prove by impeachment [517] or otherwise any issue in this case.

The Court: Has there been sufficient identification of this registration signature as being that of the defendant?

Mr. Erickson: Perhaps not. I should like to ask the witness.

Q. (By Mr. Erickson): Do you know the signature of J. A. Allen? A. Yes, I do.

Q. Do you know the J. A. Allen in the courtroom? A. Yes, sir.

Q. Is the signature that appears on that hotel register the signature of the J. A. Allen in the courtroom? Answer. A. Yes, sir, I do.

Q. Is it or is it not the signature?

A. Yes, sir, it is.

Mr. Emigh: We still object on the ground it is

(Testimony of Iva Comini.)

not properly identified.

The Court: Exhibit 77 is admitted. Objection overruled.

(Whereupon, Plaintiff's Exhibit No. 77 for identification was admitted in evidence.)

Mr. Erickson: This exhibit shows the registration of J. A. Allen, it's a regular hotel register, for August 6, 1945, in the Samuels Hotel, and shows "J. A. Allen, City, time 60/61" and the number after that is 6158, and [518] on a later date is the hotel register for August 27, 1945, and about the ninth line shows J. A. Allen signed that register again.

(Whereupon, reference book, Samuels Hotel, was marked Plaintiff's Exhibit No. 78 for identification.)

Q. (By Mr. Erickson): I'll now hand you Plaintiff's identification 78, and ask you to state what that is, Mrs. Comini?

A. These sheets are written up every night; we take those register sheets and the clerk writes the person's name on this, the date they came in, and their room number, and it's also used for checking them out of their rooms; it shows the date they come in and the date they're checked out.

Q. Are those official records of the Samuels Hotel at Wallace? A. That's right.

Q. And do you know that they are official records of that hotel? A. Yes, sir.

(Testimony of Iva Comini.)

Q. They show the departure as well as the entrance of each guest in the hotel? A. Yes.

Q. And that record is a part of the permanent records of the hotel? A. That's correct.

Q. Does that—well, I'll offer—first I think I'd better ask another question; did you prepare this yourself?

A. No, the night clerk prepares those.

Q. Are you familiar with them?

A. Yes, I am.

Q. And they are the official records of the hotel?

A. Yes, sir, they are.

Q. Does this record show the entrance and leaving of J. A. Allen from the Samuels Hotel on August 27 and August 6, 1945?

A. I'll have to look at it; I can't tell you.

Q. Well, you look at it to make sure.

Mr. Emigh: Before you answer that I want to make an objection. We'll object to the question on the grounds that the exhibit is the best evidence, and the permission of the witness to testify from the exhibit before it is admitted in evidence is prejudicial error, and the exhibit so far is incompetent, irrelevant and immaterial.

The Court: If she answers the question as put—

A. Came in August 27, and checked out August 29.

The Court: Just a moment. That's stricken. Would you read the question, please, Mr. Taylor?

(Testimony of Iva Comini.)

(Whereupon, the reporter read the question, as follows: "Does this record show the entrance and leaving of J. A. Allen from the Samuels Hotel on August 27 and [520] August 6, 1945?")

The Court: All she needs to say is yes or no. If it shows it, say yes; if it doesn't show it, say no.

Mr. Emigh: Exception. I take it my objection is——

The Court: You may have an exception to that. You may read the question, Mr. Taylor, to the witness, and she may answer yes or no.

(Whereupon, the reporter again read the last previous question.)

A. Yes, it does.

Mr. Erickson: I offer, then, the exhibit.

Mr. Emigh: The document is objected to on the ground and for the reason the same is not properly identified, it is incompetent, irrelevant and immaterial to any purpose in this case, and may I have a moment to examine it, your Honor? We have never seen it.

The Court: Surely.

Mr. Emigh: My objection has been made to this exhibit.

The Court: The situation of this proffered exhibit of course is somewhat different from 77, the register signed by the defendant, under the witness' testimony. While not testified directly, by

(Testimony of Iva Comini.)

implication at least this was kept in the regular order of business of the hotel. Now, assume that instead of you wishing to [521] keep this out, that Mr. Allen wanted this in; would you think this was admissible evidence if Mr. Allen were offering it?

Mr. Emigh: I don't think it's properly identified.

The Court: On what basis is it not properly identified?

Mr. Emigh: I think it's got to be shown that it's kept by her in the ordinary course of business at or near the time the transaction occurred, not a transcript from another record which is not in evidence.

The Court: Is it your position that in Federal Court the particular individual who makes the entry in each instance has to be in the courtroom?

Mr. Emigh: I say it has to be that individual or someone who is keeping the books in the ordinary course of business under the direction of that individual.

The Court: That once was the rule in state court, but I'm very doubtful that that has been the rule in Federal Court for some time, counsel, under the statute. However, I'll reserve ruling on this exhibit. If the government wishes to further identify it, it can, or it can leave it as it is. Exhibit 78 for identification, ruling will be reserved.

Q. (By Mr. Erickson): I think my last question was somewhat confusing, in that I combined

(Testimony of Iva Comini.)

the entrance dates and the [522] leaving dates. I will ask you if there is an entrance date and a leaving date for the earliest visit in August, and if so, give that.

A. Well, he checked in on the 6th, checked out on the 10th.

Q. And for the later date in August?

A. Checked in on the 27th, and checked out on the 30th, August 30; is that what you asked me?

Q. Yes, that's correct. Now, Mrs. Comini, I notice that these lists are kept alphabetically, that is, all the guests are listed "A" whose surnames begin with "A." Can you explain how these records are kept by the Samuels Hotel?

A. They have a ledger book that starts out A, B, C, D, and they have a file card. As a guest checks in we write their name on a file card, and those file cards are all written up on these sheets, and then they're put back in the box, and when they check out that card is taken out and filed, and checked out on this sheet alphabetically.

Q. Is that identification, Plaintiff's identification 78, made from the original cards that are kept at the desk of the Samuels Hotel?

A. That's right.

Q. And are the daily cards destroyed?

A. Yes, sir, they are.

Q. And these are the only permanent records?

A. The permanent record is your register sheet.

Q. Yes, in addition to the register sheet, are

(Testimony of Iva Comini.)

those the only permanent records that the hotel keeps? A. Yes, sir.

Mr. Erickson: I'll renew the offer of 78.

The Court: Exhibit 78 is offered; admitted.

Mr. Emigh: Exception.

The Court: Whatever objection there is is overruled.

(Whereupon, Plaintiff's Exhibit No. 78 for identification was admitted in evidence.)

Mr. Emigh: No cross-examination.

(Whereupon, there being no further questions, the witness was excused.)

AUDREY MORPHEW

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name to the court and jury, please? A. Audrey Morphey.

Q. And where do you reside, Mrs. Morphey?

A. West 2521 Rowan.

Q. Are you employed at the present time?

A. No, I'm not.

Q. What was your former occupation, Mrs. Morphey?

A. I was bookkeeper at LaVigne and Company.

Q. At LaVigne and Company; who are they?

(Testimony of Audrey Morphew.)

A. Edwin LaVigne and Company is a broker office.

Q. Where are they located?

A. In the Radio Central Building.

Q. Have they been a stock brokerage house in Spokane for a number of years?

A. Yes, twenty-five years.

Q. How long were you employed by LaVigne and Company? A. Eight years.

Q. And what did your duties consist of?

A. Oh, at first, bookkeeping, shorthand, everything, office general work, until the last I just supervised.

Q. Did you have charge of records relating to the sale of Pilot and Lucky Friday Extension stock?

A. Yes, sir, I did.

Q. Did LaVigne and Company make any public offerings or portions of public offerings of Lucky Friday Extension and Pilot Silver Lead Company stock? A. Yes, they did.

Q. I'll hand you Plaintiff's identification number 2, Mrs. Morphew, and ask you to state what those are?

A. These are checks we sent to the Lucky Friday Mining Company in payment for stock that we sold.

The Court: Just a moment; does the jury get clearly what the witness says? [525]

Mr. Erickson: You'll have to speak up so all the jurors can hear you, Mrs. Morphew.

(Testimony of Audrey Morphew.)

Q. (By Mr. Erickson): Did you total these checks or do you know how much they total there?

A. No, I don't know the total amount of the checks.

Q. I'll hand you Plaintiff's identification 12 and ask you to state what those are, what number 12 consists of?

A. These are checks that we sent to the Pilot Mining Company in payment of stock that we sold.

Q. These are checks by your brokerage house, in both instances, to these different mining companies?

A. That's right.

Mr. Erickson: I offer 2 and 12 at this time.

Mr. Etter: To which we object at this time as being incompetent, irrelevant and immaterial, not proving or going to prove any issue in this case as made out in any count of the indictment as against the defendant Allen, no proof at this time that there's any proper foundation for their introduction, no connection shown at all between them and anything alleged in the indictment and the defendant Allen.

The Court: Let me see them.

Mr. Erickson: These were checks that Irene Vermillion identified during her testimony as being deposited to the accounts of these two companies respectively.

The Court: Objections overruled.

Mr. Etter: Exception.

The Court: Exhibits 2 and 12 admitted.

(Testimony of Audrey Morphew.)

(Whereupon, Plaintiff's Exhibits No. 2 and 12 for identification were admitted in evidence.)

Q. (By Mr. Erickson): Mrs. Morphew, I'll hand you Plaintiff's identification 21 and ask you to state what identification 21 consists of.

A. These are letters that come back with the stock from the Pilot Silver Lead Mines.

Q. Who were those letters received from?

A. From the Pilot Silver Lead Mines.

Q. Were they received by you in the course of mail? A. Yes, they were.

Q. And who are they signed by?

A. Irene Vermillion.

Q. Did you act pursuant to the instructions contained in those letters? A. Yes, I did.

Mr. Erickson: I offer 21 at this time.

Mr. Etter: To which the same objection is made on the grounds stated in the last objection.

The Court: Objection overruled.

Mr. Etter: Exception. [527]

The Court: Exhibit 21 admitted.

(Whereupon, Plaintiff's Exhibit No. 21 for identification was admitted in evidence.)

Q. (By Mr. Erickson): I'll hand you Plaintiff's Exhibit 52, Mrs. Morphew, which has already been received in evidence, and ask you to state whether or not the letters, consisting of letters on Lucky Friday Extension Mining Company station-

(Testimony of Audrey Morphew.)

ery signed by Glynn D. Evans were received by you, and how they were received by you?

A. These letters were received by us through the mail, with the stocks.

Q. They were received in Spokane, Washington, or elsewhere?

A. Yes, in Spokane, Washington.

Q. On Plaintiff's Exhibit 21, the second letter, which is dated June 8, 1946, at Wallace, Idaho, when was that received by you, according to your recollection?

A. June 12.

Q. How do you fix that date?

A. It's fixed up in the corner of the letter.

The Court: What date, '45 or '46?

Q. '46. A. 1946.

Q. Where is it?

A. The yellow letter; this is their copy.

Q. I'm referring you to a carbon copy of the letter, and [528] that is the receipt mark you just spoke about?

A. Yes, it is.

Q. I'll hand you Plaintiff's Exhibits 68 and 69, and ask you what those are?

A. These are prospectuses for the Pilot Silver Lead Mines and the Lucky Friday Extension that went out when we took orders for the stocks.

Q. Now, how did you use those prospectuses, Mrs. Morphew?

A. We mailed them out to our customers, our mailing list.

Q. And you mailed them out to all your customers, or just portions of your customers?

(Testimony of Audrey Morphew.)

A. I think it was all of them.

Q. How many shares of Lucky Friday Extension stock did your firm handle?

A. I don't recall what it was.

Q. But it was only a limited amount?

A. Yes.

Q. And the same with Pilot?

A. That's right.

Mr. Erickson: That's all; you may cross-examine.

Cross-Examination

By Mr. Etter:

Q. Do you know the defendant Allen?

A. No, I don't.

Q. Did you ever have any dealings with him during the time that you handled the issue of the Extension and the Pilot, [529] Mrs. Morphew?

A. No, I didn't.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.)

BEN REDFIELD

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name to the court and jury, please? A. Ben Redfield.

Q. And where do you reside, Mrs. Redfield; where do you live? A. In Spokane.

(Testimony of Ben Redfield.)

Q. And what is your business?

A. Brokerage business.

Q. In the stock brokerage? A. Yes, sir.

Q. Brokerage of mining stocks?

A. Yes, sir.

Q. How long have you been engaged in the brokerage business in the city of Spokane?

A. First started in 1925.

Q. You operate your own brokerage firm at the present time? A. Yes, sir.

Q. And that is located in the Radio Central Building? A. Yes, sir. [530]

Q. In the city of Spokane? A. Yes, sir.

Q. Mr. Redfield, did you handle an issue of Pilot Silver Lead Mines, Inc., stock? A. Yes, sir.

Q. And do you recall how many shares of that stock your brokerage firm handled?

A. I underwrote 100,000 shares.

Q. And what did you sell that stock for?

A. Twelve and a half cents.

Q. And were you furnished prospectuses—

A. Yes, sir.

Q. —by the company? A. Yes, sir.

Q. And what did you do with those prospectuses?

A. They were mailed and given to prospective purchasers.

Q. And I will ask you, referring to Plaintiff's identification 11, ask you to state what identification 11 is?

(Testimony of Ben Redfield.)

A. It's a check drawn by me to the Pilot Silver Lead Company for \$9,750.00.

Q. And what is the date of that check?

A. June 5, 1946.

Q. And what is the second check?

A. The second check is dated June 11, 1946, and drawn by me to the Pilot Silver Lead Company for \$250.00. [531]

Q. And the two checks make \$10,000?

A. Yes, sir.

Q. And represent 100,000 shares of Pilot stock?

A. That's right.

Q. And you sold this stock to the public for twelve and a half cents and remitted ten cents to the company, pursuant to your agreement?

A. Yes, sir.

Mr. Erickson: I offer 11.

Mr. Etter: The same reasons for objecting to this as have been previously stated in the other objections.

The Court: Similar ruling.

Mr. Etter: Exception.

The Court: Exhibit 11 admitted.

(Whereupon, Plaintiff's Exhibit No. 11 for identification was admitted in evidence.)

Q. (By Mr. Erickson): Mr. Redfield, I'll hand you Plaintiff's identification 20, and ask you to state what that is?

A. This is a letter from the Pilot Silver Lead

(Testimony of Ben Redfield.)

Company that accompanied the last 2500 shares which I sent that \$250.00 check for, thereby completing delivery of 100,000 shares.

Q. Who is that letter signed by?

A. By Pilot Silver Lead Mines, by Irene Vermillion.

Q. And was that letter received by you in Spokane, Washington? A. Yes, sir. [532]

Q. In your office in the Radio Central Building?

A. Yes, sir.

Q. And how was it received?

A. Received by mail.

Mr. Erickson: That's all; you may examine. First I want to offer Plaintiff's identification 20 in evidence.

Mr. Etter: If I may repeat the objection, your Honor, on the same grounds, to save time and expedite the matter.

The Court: Let me see it. Exhibit 20 admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 20 for identification was admitted in evidence.)

Mr. Erickson: You may cross-examine.

Cross-Examination

By Mr. Etter:

Q. Mr. Redfield, you handled about I think you said 100,000 shares as an underwriter on the Pilot Silver Lead Mines, Inc.? A. Yes, sir.

Q. Did you have some discussions about the

(Testimony of Ben Redfield.)

handling of that 100,000 shares prior to the time that you received it and sold it to your customers?

A. Yes, I think so, yes.

Q. Who did you discuss anything pertaining to that issue with, Mr. Redfield? [533]

A. I believe it was Elmer Johnston, primarily.

Q. Anybody else that you recall?

A. Perhaps Mr. Gibson.

Q. Mr. Gibson. Anybody else?

A. I don't think of anyone else.

Q. Do you know James Allen, the defendant?

A. Yes, sir.

Q. Did you ever have any discussion with Allen about this issue? A. No, sir.

Q. Did you ever discuss with Allen anything relating at all to the Pilot Silver Lead Mines during its promotion, organization and sale of original issue? A. I think not.

Q. You think not?

A. I don't recall of any.

Q. Have you had business dealings with Mr. Allen during that period of time?

A. No, sir, I don't believe I've ever had any direct business dealings with Allen.

Q. Has he ever been a client of your firm on anything that you can recall?

A. He was when I was with Gibson & Company, but not my own.

Q. But there was no discussion you ever had

(Testimony of Ben Redfield.)

with regard to Pilot with him at any time? [534]

A. I don't recall any.

Q. Was there any mention made of Mr. Allen in the Pilot organization by Mr. Johnston in his discussion with you?

A. No, I don't believe so.

Q. Or by Mr. Gibson? A. No.

Mr. Etter: That's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

JERRY T. O'BRIEN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Jerry T. O'Brien.

Q. And where do you reside, Mr. O'Brien?

A. Hayden Lake, Idaho.

Q. Prior to your residence there where did you reside? A. Wallace, Idaho.

Q. And what was your business connection at Wallace, Idaho, when you resided there?

A. I was in the brokerage business, Pennaluna and Company.

Q. And for what period of time?

A. From January, '43, to July, '47.

(Testimony of Jerry T. O'Brien.)

Q. Are you familiar with the Pilot Silver Lead Mines, Inc., [535] and Lucky Friday Extension Mining Company public offerings which were made in 1945 and 1946? A. Yes.

Q. I hand you Plaintiff's Exhibit 3, and ask you if you can identify this bunch of checks.

A. Yes.

Q. What were those checks, and what were they issued for?

A. These are checks issued for stock on that promotion of the Lucky Friday Extension.

Q. And whose checks are they?

A. Whose signature?

Q. Well, whose checks?

A. The Pennaluna and Company.

Q. And whose signature is that?

A. That's my wife, Mrs. O'Brien, Z. M. O'Brien.

Q. I hand you Exhibit 10 for identification, and ask you to identify those checks, please. Can you identify those checks? A. Yes, sir.

Q. And what are they?

A. They're for purchase of Pilot Silver mining stock.

Q. Speak a little louder, will you please, Mr. O'Brien? The jurors 'way down at this end have to hear you.

A. Purchasing Pilot Silver Mining stock.

Q. In connection with the—— [536]

A. With the promotion.

Q. ——with the Pilot's public offering of stock

(Testimony of Jerry T. O'Brien.)

in '46? A. That's right.

Q. And those were issued by your company, Pennaluna & Company? A. Yes.

Q. They also bear your wife's signature?

A. Some of them, and some from Earl M. Smith, who was the bookkeeper there.

Q. He was an employee of yours? A. Yes.

Q. And your wife was also an employee?

A. Yes.

Mr. Stocking: We'll offer in evidence exhibits 3 and 10.

Mr. Etter: We'll object to the admission of these exhibits, specifically Plaintiff's 10 and Plaintiff's 3, on the ground that they're incompetent, irrelevant and immaterial; do not serve in any way to connect the defendant Allen with any allegation or charge laid in any count of the indictment; improper foundation at this time; no showing of any privity to the defendant thus far testified.

The Court: Let me see them. Exhibits 3 and 10 admitted, objection overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 3 and 10 for identification were [537] admitted in evidence.)

(Whereupon, O'Brien Company in and out ledger, Extension stock, was marked Plaintiff's Exhibit No. 79 for identification.)

Q. (By Mr. Stocking): Mr. O'Brien, I'll hand you Plaintiff's Exhibit 79 and ask you if you can

(Testimony of Jerry T. O'Brien.)

identify that as one of the records of Pennaluna and Company?

The Court: Is that an identification, or admitted.

Q. For identification, yes. A. Yes.

Q. What is that record?

A. This is what we call our in and out book on the stock certificates; it gives the stock certificate number, the name it's in, and who it was delivered to.

Q. And what stock does that cover?

A. Lucky Friday Extension.

Mr. Stocking: I'll not offer this, if the Court please. I'm not offering this; it's just for identification for purposes of tracing stock certificates by Mr. Denney.

Q. (By Mr. Stocking): Mr. O'Brien, you obtained your certificates in the Pilot and the Extension at the time you gave them the underwriting money by personal delivery, is that correct?

A. Personal delivery, yes. [538]

Q. Because the offices of the company were both in Wallace? A. That's right.

Mr. Stocking: That's all.

Cross-Examination

By Mr. Etter:

Q. Did you negotiate an underwriting agreement with Mr. Grismer in respect to the handling of a portion of the stock, Mr. O'Brien?

(Testimony of Jerry T. O'Brien.)

A. Yes, it was with Mr. Grismer.

Q. It was Mr. Grismer. Did you negotiate any of the underwriting agreement with Mr. Allen?

A. No.

Q. Ever talk with Mr. Allen about the organization or underwriting agreement of Pilot prior to the time you took the issue and sold it?

A. No.

Q. You were in Wallace, Idaho, at that time, were you not? A. Yes.

Q. And, of course, closely associated with the brokerage business, operating one, isn't that so?

A. Yes.

Q. You knew Mr. Keane, did you not, well?

A. Yes.

Q. Did he have an office or did one of his companies have an office with you at that time, do you remember? A. With me? No. [539]

Q. No; I was wondering, did Independence have any desk space in your company at that time?

A. No.

Q. But you did know Mr. Keane?

A. Yes.

Q. And Allen, as you say, never discussed this with you? A. No.

Mr. Etter: That's all.

Mr. Stocking: No further questions.

(Whereupon, there being no further questions, the witness was excused.)

ELMER JOHNSTON

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Elmer Johnston.

Q. And where do you reside?

A. Spokane, Washington.

Q. What is your occupation or profession?

A. Attorney at Law.

Q. How long have you been practicing in Spokane?
A. Since 1935.

Q. For how long have you been admitted to practice in any court?
A. Since 1925. [540]

Q. And prior to 1935 where did you practice?

A. In Shoshone County, Idaho; Wallace and Kellogg.

Q. Are you acquainted with the Lucky Friday Extension Mining Company and the Pilot Silver Lead Mines, Inc., those two corporations?

A. Yes, sir.

Q. Were you employed by those corporations to do some work?
A. Yes, sir.

Q. What was the nature of that employment, and when was it?

A. In about April, 1945, I was employed to register an issue of stock for the Lucky Friday Extension Mining Company with the Securities & Exchange Commission, that is, to file it; not register it, but file it under a regulation.

(Testimony of Elmer Johnston.)

Q. It was an unregistered issue, is that correct?

A. It was an unregistered issue; it was offered or to be offered under an exemption regulation, and I was employed to do that work.

Q. That was as to the Extension Company, you say?

A. Yes, sir, Lucky Friday Extension Mining Company.

Q. And were you similarly employed to do work for the Pilot Silver Lead Mines, Inc.?

A. Yes, sir. About a year later, something like that, I was employed to do this same thing with the Pilot Silver Lead Mines, Inc.

Q. Do you know the defendant James Allen?

A. Yes, sir.

Q. And how long have you known him?

A. For a number of years.

Q. Approximately how many?

A. Oh, I'd say twenty, probably.

Q. And do you know the defendants named in the indictment with Mr. Allen, Clayton Keane and Joseph Grismer?

A. Yes, sir.

Q. How long have you known those defendants?

A. Why, about fifteen years. I got acquainted with them when I was practicing law in Shoshone County, about 1930, I'd say.

Q. When did you first hear of the corporation by the name of the Lucky Friday Extension Mining Company, or when was such a corporation or the

(Testimony of Elmer Johnston.)

organization of such a corporation first discussed with you, and by whom?

A. Mr. Keane and Mr. Allen met me in the hotel at Wallace sometime in May, I believe it was, 1945, at the time I was just finishing up filing the Hunter Creek Mining Company case under Regulation A, and they asked me if I'd be interested in doing the same thing for the Lucky Friday Extension Mining Company.

Q. What do you mean, doing the same thing?

A. Preparing that company for—preparing an issue of stock by that company for public sale under Regulation A of the [542] Securities and Exchange Commission.

Q. What did such preparation involve, in addition to the filing with the Securities and Exchange Commission?

A. Pardon me?

Q. I say, what does it involve, in addition to the filing with the Securities and Exchange Commission?

A. The preparation of that filing includes a fairly accurate analysis of all the conditions of the company and its property, and the way I handle those filings, I prepare a prospectus. This prospectus is not required by law, but is filed by me as a matter of policy, and that requires a rather extensive inquiry into the affairs of the company and also a pretty close knowledge of the whole corporate set-up.

(Testimony of Elmer Johnston.)

Q. Does such an offering also involve compliance with state laws?

A. Under the laws of Idaho no company engaged in metalliferous mining is required to file on that, under that state, but in Washington it is required, yes, sir, and I undertook to do that work at the same time.

Q. And you had done that work for the Hunter Creek Mining Company just previous to this conversation, is that it?

A. Yes, sir, I just finished a case, and I had finished several others before that.

Q. What was the substance of this discussion that you had [543] with Mr. Keane and Mr. Allen?

A. We met in the lobby of the hotel, and they informed me that they were operating under some arrangement in Montana, a mining property, but they had become interested in the Mullan district, and Mr. Keane said he had organized the Lucky Friday Extension Mining Company, and that it comprised a group of claims lying just to the west of the then quite prominent Lucky Friday Mine, and we sat down, I was very willing to assume the employment, very glad to get it, and we sat down and talked over the whole affairs of the company. Mr. Keane and Mr. Allen were present, and we talked over the size of the company, and I believe that I required them to amend the charter to be sure that it was non-assessable, and we discussed the entire set-up. They had worked out the plans and

(Testimony of Elmer Johnston.)

gave them to me. At that time Mr. Keane told me that Mr. Allen had been under some sort of a civil injunction——

Mr. Etter: By the way, I don't want to interrupt, but was Mr. Allen present when Mr. Keane told you this?

A. Yes, they were both present; and that they intended to develop several properties up there, the Lucky Friday Extension was only one of several that they had in mind and that Mr. Allen would have no active part in the handling of any projects until the injunction had expired.

Q. A three-year limitation from the date of the Injunction, [544] is that correct?

A. Yes, sir, it was a three-year injunction, and it was about half or two-thirds over at that time, as I understand it, as I recall it. Mr. Keane brought the question up. I knew nothing about it, and he advised me that that would be Allen's position in the matter.

Q. Now, was there some immediate negotiations between the Hunter Creek and the Big Friday, that's the Lucky Friday Silver Mining Company, I believe, and the Lucky Friday Extension Company with regard to the lowering of the shaft in a joint venture?

A. That was the basis of the project, as I recall it now, that the Big Friday, as we call the company, had worked out an agreement according to what Mr. Keane advised me, that would provide that this

(Testimony of Elmer Johnston.)

new company would contribute a portion of the money to develop the shaft that would be used by both companies, and the purpose of the project as I understand it was for both Friday companies to work together to drive this shaft down for the joint use of both of them.

Q. And what about the, is it the Hunter Creek, that also entered into this agreement?

A. Later on, after it became public knowledge that these two companies had entered this joint agreement, then the Hunter Creek Company became interested in it, and sought [545] to join in with the other two companies to get the benefit of the work for its property also.

Q. Did you participate in any of those negotiations either with respect to the Hunter Creek or the Extension?

A. I participated in the one in which the Hunter Creek was involved.

Q. You've been the Hunter Creek's attorney for some time, is that right? A. Yes, sir.

Q. Who is the principal head of the Hunter Creek Company? A. Mr. C. O. Dunlop.

Q. And you have been associated with him and his companies for a number of years?

A. Yes.

Q. Do you have office space together?

A. Yes, we do.

Q. In connection with those negotiations, with whom did you negotiate? Who participated in the

(Testimony of Elmer Johnston.)

negotiations on behalf of the Extension Company?

A. Well, as I recall, there was Mr. Horning, Mr. Allen, Mr. Keane, and Mr. Dunlop and myself.

Q. And contracts were drawn and signed?

A. Yes, sir.

Q. Now, did you then undertake to prepare a letter of notification for filing, such as you've described? [546]

A. Yes, sir.

Q. And from whom did you get information in connection with the prospectus that you were preparing?

A. I got that from Mr. Keane, Mr. Allen, Mr. Grismer, and Mr. Arthur Lakes, the engineer that Mr. Keane told me would be in charge of the operation.

Q. What type of information was it necessary to get together?

A. It was a new company, and how much stock would be used for acquiring property, how much for promotion, how much for attorneys' fees, what the offering price would be, what was the basis of this offering, what would be done with the money, what kind of a development program would be carried on, and what engineering and geological data was available to justify the offering, and other necessary material facts that I thought would properly present the question.

Q. Do you know who made the determination as to how much stock would be issued as the promotional stock?

(Testimony of Elmer Johnston.)

A. No, I don't believe I do. I know that the information came from those three sources; it would be hard for me to allocate which one authorized it or authenticated it.

Q. That is the three sources you've just mentioned, Mr. Keane and Mr. Allen and Mr. Grismer?

A. Yes.

Q. And with whom did you have the discussion as to what your [547] compensation would be for your services?

A. I talked it over with Mr. Keane that evening, that day, on the Lucky Friday Company, and the Pilot I think I talked that with Mr. Grismer, as I recall it, and I'm not sure whether Mr. Allen was present at that time or not.

Q. What arrangements were made for your compensation?

A. I was to get—Mr. Keane said the attorneys' fees would be 500,000 shares, this had all been arranged beforehand, and I asked for ten per cent of that, or 50,000 for me, and 25,000 for office space, they had no office space, no Washington office, and a company filing a statutory statement here had to have some office, so I suggested it would be proper to allow at least 25,000 shares for that purpose, so it was agreed that 75,000 out of 500,000 would be allocated to me.

Q. Was there some cash consideration to be paid also?

(Testimony of Elmer Johnston.)

A. Yes, \$1,000 attorney's fees, I believe, to the best of my recollection.

Q. And who paid that attorney's fee?

A. Mr. Keane paid me that attorney's fee, I believe.

(Whereupon, copy letter Johnston to Keane, 7/24/45, was marked Plaintiff's Exhibit No. 80 for identification.)

Q. Now, when Lucky Friday Extension stock was issued, how was your 75,000 shares issued to you, what was the transaction? [548]

A. Will you state that again, please?

Q. I say, when it came to the issuance of your 75,000 shares which was the agreed price for your attorney's fees and the use of your office as a Washington office, how was that stock issued to you; what was the arrangement?

A. To the best of my recollection——

Q. Well, just a moment; I'll have you identify exhibit 80 for the purpose of refreshing your recollection; what is that exhibit, Mr. Johnston?

A. This is the letter I wrote to Mr. Keane.

Q. That's a duplicate original of a letter you wrote to Mr. Keane?

A. Yes, sir.

Q. On or about what date?

A. July 24, 1945.

Q. Now, referring to that, does that refresh your recollection as to the arrangements which you made?

A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. And what were those arrangements, and who advised you of this arrangement?

A. As I recall, I think I had lunch with Mr. Allen one day, and he suggested that Keane had asked him to ask me if I had any objection to some of his stock being issued in my name.

Q. When you say "his" are you referring to——

A. Keane's stock.

Q. Keane's stock, some of the 500,000?

A. Yes.

Q. The 500,000 shares, as I understand it, was to be issued for attorneys' fees, and were you and Mr. Keane the only attorneys involved?

A. Yes, sir.

Q. So this would be a portion other than the 75,000 shares which was to come to you?

A. Yes, sir. Under the arrangement Mr. Keane was entitled to 425,000 shares out of the 500,000, and I was entitled to a total of 75,000, and he apparently desired to have it issued in smaller blocks, so shortly after that he mailed me certificates in 25,000 denominations, and I endorsed all of them back to Mr. Keane except the three that I retained.

Q. Referring to your memo, or I mean your letter, exhibit 80, can you give the numbers of the stock certificates which were involved?

A. Certificate number 16 for 200,000.

Q. That was a certificate that was issued to you?

A. Issued in my name and endorsed and sent back for cancellation. I retained certificates 19, 20 and 21.

(Testimony of Elmer Johnston.)

Q. What was issued out of certificate number 16, the 200,000 certificate? [550]

A. I think all of the other twenty-fives were taken out of that 200,000.

Q. That would be eight?

A. Eight twenty-fives were taken out of the 200, and the 200 was cancelled.

Q. The eight certificates for 25,000 shares each?

A. Yes, sir.

Q. And have you those numbers in mind?

A. There's 22, for twenty-five; 23 for twenty-five; 24 for twenty-five; 25 for twenty-five, and 26 for twenty-five, all returned back to Mr. Keane.

Q. Those are five of the eight, that were returned? A. Yes, sir.

Q. And before you returned them did you endorse them so that they would be transferable?

A. Yes, sir.

Q. And you sent those back to Clayton Keane?

A. Yes, sir. Since the stock was all his stock anyhow, I could see no objection, if he wanted it broken up, in doing it.

(Whereupon, Extension documents filed with S.E.C. were marked Plaintiff's Exhibit No. 81 for identification.)

Q. I hand you Plaintiff's Exhibit 81 for identification, and ask you if you can identify the papers which appear in [551] that file?

A. Yes, I can.

Q. What is that material, Mr. Johnston?

(Testimony of Elmer Johnston.)

A. That is the material filed through my office by the Lucky Friday Extension Mining Company in support of its application to make a public sale of its shares under Regulation A of the general rules and regulations of the Securities Act of 1933.

Q. And where was that filed?

A. Filed in the Seattle office of the Securities Commission.

Q. That's the Securities and Exchange Commission?

A. Yes, sir, the Securities and Exchange Commission, Seattle, Washington.

Q. And this material all went through your office before it was filed, or was looked over by you?

A. Yes, sir.

Q. And does it also contain the prospectus material as well as the letter of notification?

A. Yes, sir.

Q. Now, with regard to the Pilot Silver Lead Mines, Inc., when were you first employed by that corporation?

A. I can't exactly state, but I believe it was about the first of the year 1946 that Mr. Grismer came to my office and asked me if I would take care of that property and look after the filing of its statutory statement and [552] offering data, and Mr. Grismer owned the claims of this company.

Q. Before I go any farther with the Pilot, there was a second offering made by the Extension, was there not?

A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. That was covered in this letter of notification which you have just identified, 81?

A. Yes, sir.

Q. And the first offering covered how much stock?

A. I'd have to refresh my recollection.

The Court: This is of the Extension?

Q. Of the Extension, yes.

A. 1,500,000 shares.

Q. And at what price?

A. At twelve and a half cents per share.

Q. There had been one filing contained in there, was there not, a previous filing where you had set a price at the market, and then you amended that in the Lucky Friday Extension before any offering was made?

A. It's my understanding that the market for this stock after the first million shares was offered started to go up, and we reserved the right in the 500,000 share block of the first offering to sell it at market, and it raised a considerable legal question with the federal government as to the propriety of such proceedings, and during the time [553] that we were working it out, the price went up to around 30 cents, and we were offering it out at twelve and a half cents, that is, we had originally offered the first block of a million shares, so when we had concluded the triple contract between the three companies and threw them all together into one project as far as the shaft was concerned, it was the con-

(Testimony of Elmer Johnston.)

sensus of opinion that our stock was worth at least as much as the market, or more, and the market being around 25 or 28 cents, we filed this second offering at about 31 or 32 cents, as I recall it now, and withdrew all stock at market.

Q. And that was to cover the first 500,000 shares, but was amended to cover 300,000, isn't that correct?

A. Yes, sir; in other words, the final sale of the second supplement offering of the Lucky Friday X Company was limited to 300,000 shares, I believe.

Q. And can you recall with whom these discussions were concerning this second offering, and who determined that price?

A. As I said before, the contracts were all agreed to by the principals in the month of September, I believe it was, '45, wherein they all finally agreed how they'd go down with this shaft. Of course, the price of that second offering I believe was more or less worked out by me through the brokers, because at that time we had a public [554] buying power, and stock was selling around 30 cents, and it was just a legal question as to what we could do, and any questions that I had along that line of course I'd refer to Mr. Keane, and I would get a response from either him or a telephone call from Mr. Allen or something from Grismer. I don't know exactly who told me what, but anyhow, it was agreed that that price was satisfactory.

(Testimony of Elmer Johnston.)

Q. Now, Exhibit 81 for identification shows that the first filing in connection with the first offering was made July 9, 1945, is that correct?

A. Yes, sir.

Q. And the second offering that you have referred to was covered by filing made January 9, 1946, and an amended filing January 17, 1946, is that correct?

A. Yes, sir.

Q. And there was also a supplement added to the prospectus explaining the triple contract?

A. Yes, sir.

Q. The three way contract?

A. Yes, sir.

Q. Now, was it about that time in January, 1946, then, or sometime in January you say that you first had a discussion about the Pilot Company?

A. Yes, sir.

Q. And did you then begin preparations for a prospectus and a [555] letter of notification for that company?

A. Yes, sir.

Q. And what preparations were necessary there?

A. Similar to the other, the one of the Lucky Friday X Company. It was not required by law to file a prospectus, and Grismer wanted me to just short-cut it and file a letter of notification and take the simple procedure that you could take and that he'd been advised by some other attorneys he could take, but I wouldn't do it that way; I insisted on the regular procedure, and called for a prospectus giving all the material facts, and I set about to prepare that, and inquired of every source I could think of to get

(Testimony of Elmer Johnston.)

that information together, and Mr. Lakes was the engineer; he prepared complete data, maps and geological information, engineering reports, and Mr. Gyde did some of the legal work, and I just probed around until I got everything that I thought I needed, then I prepared a skeleton of it.

Q. Now, in connection with the preparation of the Pilot prospects, was there some discussion about having some photographs taken? A. Yes, sir.

Q. With whom was that discussion?

A. Frankly, I told them that I'd like to see some pictures taken, and everybody agreed that it was a good idea. [556]

Q. Now, by "everybody," does that include the people you've mentioned before as being interested in this company? A. Yes, sir.

Q. Mr. Keane and Mr. Grismer and the defendant Allen? A. Yes, sir.

Q. Who arranged for the taking of these pictures? A. I did.

* * *

(Whereupon, at 4:30 o'clock p.m., the Court took a recess in this cause until Friday, June 10, 1949, at 10 o'clock a.m.)

Spokane, Washington, Friday, June 10, 1949, 10 o'clock a.m. (Fifth day of trial.)

(All parties present as before, and the trial was resumed.)

(Testimony of Elmer Johnston.)

ELMER JOHNSTON

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Stocking:

Q. My last question, Mr. Johnston, concerned your arranging to have airplane photographs taken of the Pilot property [557] for use in the prospectus, was that correct? A. Yes, sir.

(Whereupon, check Allen to Johnston 2/26/46 was marked Plaintiff's Exhibit 8-i-1 for identification.)

(Whereupon, check Allen to Johnston 5/14/46 was marked Plaintiff's Exhibit 8-l-1 for identification.)

(Whereupon, letter Johnston to Keane 5/4/46 was marked Plaintiff's Exhibit No. 82 for identification.)

(Whereupon, copy annual statement Extension Company was marked Plaintiff's Exhibit No. 83 for identification.)

(Whereupon, letter Johnston to Extension Co. 4/29/46 was marked Plaintiff's Exhibit No. 83-a for identification.)

(Whereupon, letter Johnston to Keane 4/5/46 was marked Plaintiff's Exhibit No. 84 for identification.)

(Testimony of Elmer Johnston.)

(Whereupon, stock certificates in Extension Co. endorsed by Johnston were marked Plaintiff's Exhibit No. 50-a for identification.)

Q. Now, I'll hand you what has been marked Plaintiff's Exhibit 8-i-1 for identification, taken from the exhibit which was previously identified as 8-i, Montana Leasing Company records, and ask you if you can identify that check in connection with the payment of the airplane photographs?

A. Yes, I can. I think that is the check that Mr. Allen gave me to pay a portion of the cost of that reconnaissance [558] flight.

Q. Was that notation on the check to the best of your recollection at the time you received the check, this notation in the left hand corner?

A. Yes, sir.

Q. And whose signature is that on the check?

A. It is my notation on the face indicating what it's for, and my signature on the back.

Q. That is your writing there?

A. That is my writing, yes, sir.

Q. And whose signature is on the check?

A. Mr. J. A. Allen.

Mr. Stocking: We'll offer 8-i-1.

The Court: Let me see that. How does this come to be 8-i-1?

Mr. Stocking: Taken from Exhibit 8-i.

The Clerk: Originally exhibit 8. The whole folder was marked Exhibit 8, and each bundle of monthly checks was marked with a letter.

(Testimony of Elmer Johnston.)

The Court: All right.

Mr. Etter: I have no objection.

Mr. Stocking: This is a Montana Leasing Company check——

The Court: Just a moment; is there any objection?

Mr. Etter: There's no objection, your Honor.

The Court: Exhibit 8-i-1 is admitted.

(Whereupon, Plaintiff's Exhibit No. 8-i-1 for identification was admitted in evidence.)

Mr. Stocking: This is a Montana Leasing Company check signed by James A. Allen, February 26, 1946, to Elmer Johnston, and bearing on the lower left hand corner the initials "P.S.L., \$200.00"; Mr. Johnston's notation "Photo Airplane Trip, Libby."

Q. (By Mr. Stocking): Did those initials "P.S.L." have any significance to you on the check, Mr. Johnston?

A. No, not necessarily. They were made by the maker of the check.

Q. You didn't make them? A. No, sir.

Q. Was there any company that you were working for that had the initials "P.S.L." at that time?

A. The Pilot Silver Lead was the company directly involved in a portion of this matter.

Q. I'll hand you Plaintiff's exhibits 8-l-1 and 82 for identification, and ask you if you can identify both of those exhibits? A. Yes, sir, I can.

(Testimony of Elmer Johnston.)

Q. And what is Plaintiff's exhibit 82; who prepared that?

A. It's a letter to Mr. F. C. Keane dated May 4, 1946, by me.

Q. And does this Exhibit 8-1-1 relate to the subject matter [560] of that letter?

A. Yes, sir, 8-1-1 is a check for \$1,000 signed by Mr. Allen and delivered to me in response to my letter of May 4, 1946.

Mr. Stocking: We'll offer 82 and 8-1-1 in evidence, please.

Mr. Etter: No objection.

The Court: Let me see them, please. Exhibits 8-1-1 and 82 admitted.

(Whereupon, Plaintiff's Exhibits No. 8-1-1 and 82 for identification were admitted in evidence.)

(Whereupon, underwriting agreement Gibson and Extension Co. was marked Plaintiff's Exhibit No. 85 for identification.)

Mr. Stocking: Exhibit 82, a letter on Elmer Johnston's stationery, May 4, 1946, to Mr. F. C. Keane, attorney at law, Wallace, Idaho. (Whereupon, Mr. Stocking read Exhibit 82 to the jury.) Exhibit 8-1-1 is a check, Montana Leasing Company check signed by J. A. Allen, May 14, 1946, pay to the order of Elmer Johnston \$1,000, and bearing Elmer Johnston's endorsement.

Q. (By Mr. Stocking): Mr. Johnston, this check 8-1-1, then, was in payment for your services

(Testimony of Elmer Johnston.)

in connection with the Pilot Silver Lead Mines, Inc.? A. Yes, sir.

Q. And that check was delivered to you by whom? [561]

A. I think it was delivered by Mr. Allen.

Q. Can you identify Plaintiff's exhibit 85?

A. Yes, sir.

Q. And what is that exhibit?

A. That's an underwriting agreement between the Lucky Friday Extension Mining Company and E. J. Gibson & Company of this city.

Q. What is the date of that agreement?

A. July 20, 1945.

Q. And there is also attached to the agreement a letter?

A. A letter dated November 8, 1945, addressed to that company, asking them to sign this exhibit, this contract.

Q. And was this agreement prepared by you?

A. Yes, sir, I think it was, yes, sir.

Q. This was in connection with the Extension offering?

A. Yes, sir. It was prepared by me. Yes, sir, that's my agreement.

Q. Was the actual agreement between the brokers made on or about the 20th of July, 1945, the date shown on the agreement, the actual underwriting undertaken about that time?

A. Yes, sir, they had all made verbal commit-

(Testimony of Elmer Johnston.)

ments, but I insisted that they reduce them to writing.

Q. And is that the reason this was dated as of that date?

A. Yes, sir; it was a few days after the offering came out.

Mr. Stocking: We'll offer this in [562] evidence in respect to one of the overt acts. Just one question that I think——

The Court: Just a moment, please.

Mr. Stocking: May I ask one question.

The Court: Allow counsel to look at the agreement and letter.

Mr. Etter: Did you want to ask another question?

Mr. Stocking: Yes, I would like to.

Q. (By Mr. Stocking): You were acting in your capacity as an attorney for the Lucky Friday Extension Mining Company at the time you prepared this agreement? A. Yes, sir.

Mr. Etter: We'll object, your Honor, to the admission of exhibit 85 on the grounds that it's incompetent, irrelevant and immaterial to prove any issue made in the case thus far relative to any allegation or charge in the indictment affecting the defendant Allen, on the ground that it clearly appears upon its face and on the testimony adduced so far that the defendant Allen is not privy to anything which appears in the exhibit which is here attached, and on the further ground that from the

(Testimony of Elmer Johnston.)

testimony of the witness it appears that the witness was counsel for the company in question, indicating a relationship of privilege, and we object to it on that further ground also. [563]

The Court: Let me see it. Ruling reserved.

Q. (By Mr. Stocking): Mr. Johnston, I'll hand you Plaintiff's exhibit 50-a, which have been identified as Lucky Friday Extension Mining Company certificates taken from exhibit 50, consisting of certificates 1178, 1179, 1181, 1182, 1183, 1184 and 1185, and ask you if you can identify the certificates in this exhibit 50-a? A. I can.

Q. And do they bear your endorsement on the back? A. They do.

Q. And these certificates were issued to whom?

A. To me, Elmer E. Johnston.

Q. Now, referring to the date of the issuance of the certificates, can you tell me under what circumstances were these certificates issued to you and endorsed by you, and where?

A. As I recall, in Wallace on one of my trips in the middle of October, 1945, Mr. Allen and I were having dinner or lunch, and someone from his office or Mr. Keane's office came to us with these certificates in my name that had apparently been transferred out of some of the "twenty-five" series that I testified to yesterday. The stock was all of course the property of Mr. Keane, but it was transferred in my name in 5,000 blocks, and of course the stock could not be sold without my endorse-

(Testimony of Elmer Johnston.)

ment on the [564] certificate, so at the suggestion of Mr. Allen, as I now recall, I endorsed them, since it was done at his suggestion and at Keane's suggestion.

Q. You mean originally the stock had been endorsed back by you in the 25,000 blocks at Mr. Allen and Mr. Keane's suggestion, is that correct?

A. Yes, sir.

Q. But this transaction took place with Mr. Allen, or did Mr. Keane participate, too?

A. No, just Mr. Allen and I alone in the restaurant when this stock came down, I thought from Keane's office, but it was suggested by Mr. Allen to me that I could endorse these certificates to accommodate the boys. Now, these certificates, I mean this stock, actually belonged to Mr. Keane.

Q. As far as you knew?

A. Yes. I disclaimed no interest in it whatsoever, because it was not a part of the stock allocated to me.

Mr. Stocking: We offer in evidence Exhibit 50-a.

A. I wish also to say that there was nothing legally wrong with endorsing the stock in my own name.

Mr. Emigh: Just a moment; we object to this as not responsive to any question, and ask that it be stricken.

The Court: Stricken; volunteered.

Mr. Etter: I'm going to object to the [565] offer of this exhibit, your Honor, on the ground that at

(Testimony of Elmer Johnston.)

the present time in the present state of the record it is incompetent, irrelevant and immaterial to prove any issue as laid in any charge or allegation in the indictment as against the defendant Allen, and the further ground that on its face it appears to be, and from the testimony undoubtedly is attorneys' stock indicated in the prospectus, and any testimony thus far indicates it as being eligible for sale; on the further ground that there's no privy shown at all between the stock itself and the defendant Allen, and on the basis of the testimony thus far, if the exhibit is admissible on some other ground it now seems premature.

The Court: Let me see it.

Mr. Stocking: It's our theory that any of this promotion stock with which Mr. Allen is identified is one of the factors in the case to be considered.

The Court: I may say this, counsel; the certificates themselves are admissible. There's one matter I'd like to talk with counsel about; I'm going to excuse the jury.

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

The Court: I am concerned, counsel, with these notes which are attached to the certificates. The testimony [566] of this witness discusses certain certificates. They're clearly admissible under his theory he says Mr. Allen requested him to endorse

(Testimony of Elmer Johnston.)

them. I do not know that Mr. Etter's objections embraced these notes.

Mr. Etter: Well, I'll include the notes and embrace them anyway, your Honor, just for the record, at your suggestion.

The Court: No, I'm not suggesting it.

Mr. Etter: Well, at your observation; I'll take advantage of it.

Mr. Stocking: Which notes do you have reference to?

The Court: These little notes. There's been no reference, as I remember it, to these little notes.

Mr. Stocking: Those are the Federal stamps which appear on all cancelled certificates.

The Court: I realize there are certain things that do appear, but because I know it, am I to admit it for the jury? You may wish somebody here to explain those. Mr. Etter having ultimately, stimulated by my observation, objected to those, I think that I should keep them out until explanation is given of them. The jury may come in.

Mr. Emigh: It appears from the record, your Honor, that this is attorneys' stock issued and included in the prospectus. Now, when the public that was buying it [567] advised in the prospectus that a certain amount of the stock is to be issued as attorneys' stock, then the public is not deceived by what is done with that stock afterward. You can give it to your friends, you can trade with it back and forth, you can do anything you want with it.

(Testimony of Elmer Johnston.)

The public is not defrauded when they know that so much of the issue goes to the attorneys' stock, and we think this goes to the very meat of one of the charges, and to admit it would be prejudicial and lay the foundation that the jury would draw the belief from that that the charge in the indictment has a material effect. We believe that the purchasing public was put on notice that this stock and other stock had been issued for attorneys' fees, and that there was nobody deceived by the fact of what was done with that stock after it was issued, whether it was turned back to the company or given to someone else or what was done with it, and we feel that when this kind of testimony goes in it's highly prejudicial to the defendant.

The Court: Well, counsel, the theory of the government's case, and apparently the—well, I'll say the theory of the government's case is that Mr. Allen actually was a very interested participant in the affairs of each of these two companies and that he was concealing his interest. The theory Mr. Allen has suggested on [568] cross-examination is that Mr. Allen wasn't interested in these companies, that he had an interest in a general project, and because of that he did do some talking about the general project, but that he was not at all concerned individually with these two companies. This testimony of Mr. Johnston is something for the jury to have to decide whether the government's theory is correct——

(Testimony of Elmer Johnston.)

Mr. Emigh: Your Honor——

The Court: ——or Mr. Allen's claim is correct.

Mr. Emigh: Your Honor, if that evidence is to be confined to that purpose it should be admitted solely for that purpose.

The Court: I'm not saying that it should be confined to that purpose. That's one reason for admitting it.

Mr. Emigh: Well, we think it's very prejudicial unless it is confined to that purpose.

The Court: After all the evidence is in the Court may be then in a position to say some things about certain exhibits, but at the present time the government says that Mr. Allen was a very important actual concealed party with respect to the two companies. Apparently, as I say, Mr. Allen's defense is that he didn't have anything to do with either company, and was just merely a sort of a disinterested person, kindly disposed; that he [569] made some statements about the general mining business because he did have an interest in the welfare of the general mining business. The jury may come in.

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

The Court: Exhibit 50-a for identification has been offered, consisting of several stock certificates, and attached to some of these several stock certificates are some small sheets of paper with certain writing or printing thereon. There has been no

(Testimony of Elmer Johnston.)

testimony that I recollect giving any explanation of such attached papers or notes. The certificates themselves, if there was not attached these notations, would be clearly admissible. Whether the notations would be admissible on presentation of evidence is not now to be determined. Under the circumstances, Exhibit 50-a in the condition the exhibit is, with such attached notes, is rejected.

(Whereupon, letter Johnston to Keane, 5/8/46 was marked Plaintiff's Exhibit No. 86 for identification.)

(Whereupon, letter Johnston to Extension Co., 1/11/46, was marked Plaintiff's Exhibit No. 87 for identification.)

Q. (By Mr. Stocking): Referring to Plaintiff's proposed exhibit 87, can you identify that exhibit?

A. Yes, sir.

Q. What is it?

A. It is a letter by me to the Lucky Friday Extension Mining Company dated January 11, 1946.

Q. With particular reference to the fourth paragraph of the exhibit, does that refresh your recollection as to any transaction you may have had with Mr. Allen?

A. Yes, I think I can explain that, counsel, that I referred to the necessity of filing an amended form S-3-B required by the Securities and Exchange Commission in connection with this proposed offering, and I was reliably informed by

(Testimony of Elmer Johnston.)

someone that Mr. Allen had this form in his possession for delivery to me.

Q. And subsequently was that amended form delivered to you by Mr. Allen?

A. I assume that it was, yes, sir.

Q. Now, I also note that on that Exhibit 87 you have shown that a copy of this letter went to whom?

A. Mr. J. A. Allen of Callahan Consolidated Mining Company, Gyde-Taylor Building, Wallace, Idaho.

Q. Was it your practice to send copies of some of the correspondence in connection with these companies to Mr. Allen?

A. Yes, sir, I sent a copy of this letter manifestly because he was one of the parties I was trying to communicate with, [571] and in order to save writing two letters I sent him a copy, and on other instances I sent him copies of letters in dealing with this company's affairs, when I was attending to the company business.

Q. Had you had any conversation with Mr. Allen regarding the sending of these copies to him?

A. Yes, I'm sure it was suggested to me by him that if I sent copies of letters dealing with material matters, that he would try to render assistance, since his office was right across the hall from Keane's office in the Gyde-Taylor Building, and he also had an office in Spokane, and he was constantly traveling back and forth between these two cities.

(Testimony of Elmer Johnston.)

(Whereupon, letter Johnston to Keane, 3/11/46, was marked Plaintiff's Exhibit No. 88 for identification.)

Q. Now, with reference to Plaintiff's proposed exhibit 88, can you identify that exhibit?

A. Yes, sir.

Q. Well, what is it?

A. It's a letter by me to F. C. Keane, attorney at law, Wallace, Idaho, dated March 11, 1946.

Q. And with reference to the first paragraph of that letter, does that refresh your recollection as to any transaction with Mr. Allen? [572]

A. Yes, sir, it does.

Q. What was that transaction?

A. Mr. Allen about that time left copies of articles of incorporation and other matters in my office in connection with the Pilot Company, that I was commencing to work on.

Q. That was in connection with your preparation of the prospectus?

A. In connection with the preparation of the prospectus of the Pilot Silver Lead Mines Company.

Q. Did Mr. Allen come to your office several times in connection with the preparation of the prospectuses for these two companies?

A. He came to my office, yes, sir, on numerous occasions, because I was handling other work for him, and some of——

Q. As well as this?

(Testimony of Elmer Johnston.)

A. Other work as well as——

Q. This work?

Mr. Etter: I think he should finish the answer.

The Court: Yes, please don't interrupt, Mr. Stocking.

A. I'll re-state that. Yes, Mr. Allen came to my office occasionally in direct connection with the work I was doing on the Pilot and on the Lucky Friday X companies. He also of course came to my office in connection with other matters. [573]

Q. Do you recall the defendant Clayton Keane ever having come to your office?

A. In connection with this matter?

Q. Well, in connection with this matter or in connection with any matter.

A. Not since I moved to Spokane Mr. Keane I don't believe has been in my office, although we used to in Wallace have a good deal of business together, but I saw him in the hotels in Wallace and here in Spokane. He was rather casual in his manner of contacting me.

Q. Now, with reference to telephone conversations, did you ever have any telephone conversations with Mr. Keane when Mr. Allen was in your presence, in your office?

A. Yes, to the best of my recollection, it's been four years ago, on a few occasions or on occasions I called Mr. Keane to verify or talk over some matter that Allen had suggested that I do, and he was present in my office when that took place.

(Testimony of Elmer Johnston.)

Q. And sometimes on those occasions would Mr. Allen also converse with Mr. Keane from your office?

A. I can't exactly remember; he may have.

Q. Now, were these telephone conversations in connection with the work of these two companies?

A. Yes, sir.

Q. Now, showing you Plaintiff's proposed exhibit 84 and [574] Plaintiff's proposed exhibits 83 and 83-a, can you identify those exhibits?

A. Yes, I can.

Q. And what is Exhibit 84?

A. It's a letter addressed from me to F. C. Keane, attorney, dated April 5, 1946, reminding him——

Q. Now, does that exhibit refresh your recollection of any matter that was pending at that time?

A. Yes, sir.

Q. And what was that matter? Was that in connection with the Lucky Friday Extension Mining Company?

A. Yes, sir.

Q. And what is Exhibit 83? Can you identify 83-a and 83?

A. Yes, sir.

Q. What is Exhibit 83-a?

A. It's a letter dated April 29, 1946, from me to the Lucky Friday Extension Mining Company, Wallace, Idaho, requesting—enclosing form copies of a metalliferous mining company annual statement.

(Testimony of Elmer Johnston.)

Q. And does 83 appear to be one of the copies that had been enclosed? A. Yes, sir.

Q. What was the situation with regard to the filing of this metalliferous mining company annual statement?

A. Under the laws of Washington, we had filed this Lucky [575] Friday Extension Mining Company under the mining act of this state, and the law required the company to file an annual report within—on or before February 15 of the next year after the close of each calendar year, and I received these reports from the department in connection with the Lucky Friday Extension Mining Company, and I was endeavoring to get it filled out and filed. This report is designed to give a fair statement of stock transactions.

Q. Now, that is the identical—or that report which is attached to Exhibit 83-a and marked Exhibit 83 for identification is identical with the annual statement which is contained in defendant's Exhibit A, near the bottom of that file, is that correct? A. Let me look at it. Yes, sir.

Q. And that exhibit, the original of Exhibit 83, which appears in Defendant's Exhibit A, and the copies, were prepared by who and where?

A. They came to me from Wallace.

Q. That is, the signed exhibits came to you from Wallace, but the exhibit itself was prepared where?

A. I don't know; I presume it was prepared in

(Testimony of Elmer Johnston.)

Wallace. It was furnished to me by the company or one of its representatives.

Q. Does your letter of April 29, 1946, what does it indicate with respect to the transmittal of these exhibits? [576]

A. The forms were to be filled out and notarized, and enclose a five dollar filing fee.

Q. And was the exhibit in this form, with the exception of the signatures, at the time that you sent it with your letter of April 29, 1946?

A. No, sir.

Q. What was the difference?

A. It was sent in blank form, with instructions for the company to have the figures made up out of its records.

Q. Was that the information that you gave me when I talked to you about this in my office a few moments ago?

A. Well, I said, Mr. Stocking, that I got the information to fill out this form, I mean the information came to me——

Q. Yes.

A. ——from either Mr. Keane, Mr. Allen, or Mr. Grismer.

Q. And didn't you tell me at that time that you had obtained the information and had prepared those forms, filled out these forms?

A. Well, I might have misunderstood you. What I meant is that the information came to me, as near as I can recollect, in this form already put out.

(Testimony of Elmer Johnston.)

Now, if I typed it in my office I have no independent recollection of that.

Q. I see.

A. But the figures themselves, all the information came from that source, either Mr. Allen, Mr. Grismer, or Keane. [577]

Q. And did you have that information at the time you sent these forms up there?

A. No, sir, I don't think so.

Q. That's your best recollection now?

A. Yes, sir.

Q. What was the situation with regard to the time element? That was what I was trying to bring out. By reference to your letters what can you say?

A. Well, in view of the fact that the letter is dated April 29, 1946, and the form was sworn to on May 1, 1946, it would be my information then that I did have the information, the figures, and that I did make the form out myself based upon information that they furnished me.

Q. Was there some concern on your part about getting these filed? A. Yes, sir.

Q. Were they delinquent at this time?

A. Yes, sir.

Q. Had there been already an extension granted?

A. They were delinquent from February 15, and this was May 1.

Q. And there had been one telegraphic extension granted, had there not? A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. As referred, to refresh your recollection, in your letter of April 6? [578]

A. They were definitely delinquent; I was definitely anxious to get it filed, and I wrote these letters to try to get it tended to, and I want to make myself very clear, Mr. Stocking, about the matter that all these figures on this form were furnished me by either Mr. Allen, Mr. Grismer, or Mr. Keane. Now, as to whether I typed it here in Spokane or it was typed in Wallace I don't recollect, but I believe that in view of the date there, that I typed it in my office.

Q. And with regard to your office file, did you examine your office file to determine whether or not there was any letter in that file from either Mr. Keane or Mr. Allen or Mr. Grismer furnishing these figures? A. No, there isn't.

Q. There was no memo in the file indicating where the information came from?

A. No, sir.

The Court: Is this a reasonably available time for a recess? Any objection? Recess for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Mr. Stocking: At this time we'll offer in evidence Plaintiff's proposed exhibits 83, 83-a, 84, 86, 87 and 88.

(Testimony of Elmer Johnston.)

Mr. Etter: We'll make an objection to the [579] admission of each and all of these exhibits, your Honor, on the ground that no proper foundation has yet been laid to connect them in any way with the defendant Allen, and at this time they are incompetent, irrelevant and immaterial; that the letters so far as the defendant Allen is concerned are pure hearsay; that the mere fact that "CC" appears upon one is no proof, and there has been none, of any receipt of the letter or a copy thereof by the defendant Allen to in any way charge him at this time, and likewise—I think that's all.

Mr. Stocking: They're offered on the theory that they're related to these transactions that he has just testified concerning.

The Court: Let me see them. Exhibits 83 and 83-a admitted, objection overruled.

Mr. Etter: Exception.

The Court: Exhibit 87 admitted.

Mr. Etter: Exception.

The Court: Objection overruled. I do not believe I in the present state of the record am justified in admitting Exhibits 84, 86 or 88, and Exhibits 84, 86 and 88 are rejected upon defendant's objections.

(Whereupon, Plaintiff's Exhibits No. 83, 83-a and 87 for identification were admitted in evidence.) [580]

(Whereupon, documents filed with S.E.C. by Pilot Co. were marked Plaintiff's Exhibit No. 89 for identification.)

(Testimony of Elmer Johnston.)

Q. (By Mr. Stocking): Mr. Johnston, can you identify Plaintiff's proposed exhibit 89?

A. Yes, sir.

Q. What is that exhibit?

A. It's the official filing of papers on form S-3-B-1 by the Pilot Silver Lead Mines, Inc., for the sale of a public offering of securities under the general rules and regulations of the Securities Act of 1933.

Q. And who prepared that exhibit?

A. I did.

Q. And the information in there was all prepared by you or under your direction?

A. Yes, sir.

Q. And caused to be filed by you——

A. Yes, sir.

Q. ——on behalf of this company?

A. Yes, sir.

Q. And what was the filing date of that letter of notification? A. May 2, 1946.

Mr. Stocking: We'll offer in evidence Exhibit 81, previously identified as the Lucky Friday Extension filing, and Exhibit 89, the Pilot Silver Lead Mines filing. [581]

Mr. Etter: No objection.

The Court: Exhibits 81 and 89 admitted.

(Whereupon, Plaintiff's Exhibits No. 89 and 81 for identification were admitted in evidence.)

Q. (By Mr. Stocking): Mr. Johnston, these fil-

(Testimony of Elmer Johnston.)

ings were made in order to claim an exemption from the full registration provisions of the Securities Act of 1933, is that correct? A. Yes, sir.

Q. And they were being filed under the exempted Regulation A? A. Yes, sir.

Q. Was there ever any registration statement filed for either the Lucky Friday Extension Mining Company or the Pilot Silver Lead Mines, Inc.?

A. No, sir, not that I know.

Q. You were acting as attorney for the company handling that work for the company at all times?

A. Yes, sir.

Q. What other compensation did you get from the Pilot Company in addition to the thousand dollar check which was just recently referred to as an exhibit?

A. 50,000 shares of stock in the company.

Q. And what was done with that stock? Did you retain that stock?

A. It was sold, eventually.

Q. But you retained ownership of all of those shares? [582] A. Yes, sir.

Q. Or distributed them to Mr. Dunlop or some of your associates?

A. Yes, sir, I distributed part of them to Mr. Dunlop and some of the associates who helped prepare the prospectus and helped assist getting this matter filed promptly.

Q. These were people in your office?

(Testimony of Elmer Johnston.)

A. People in my office, and personal friends of mine.

Mr. Stocking: That's all.

Cross-Examination

By Mr. Etter:

Q. Mr. Johnston, I think you said that you've known Mr. Allen for about twenty years?

A. Yes, sir, about that.

Q. You and he were both long-time residents of Idaho, is that so?

A. Yes, sir.

Q. And that was when you were first practicing law in Shoshone County that you first met Mr. Allen?

A. Yes, sir.

Q. Do you recall what business Mr. Allen was in at that time, Mr. Johnston?

A. In the mercantile and grocery business, I believe.

Q. Mercantile and grocery business?

A. And meat business, yes.

Q. And do you know when Mr. Allen went into the mining business, [583] Mr. Johnston?

A. No, sir, I don't.

Q. You had left up there, had you, and come down here?

A. As I say, I don't know when he went into the business, Mr. Etter. I left there in 1935.

Q. Oh, I see. Did you know that—as a matter of fact, the greater part of your work, I think, Mr. Johnston, is handling mining work of all kinds, isn't that correct?

A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. And as a matter of fact your office specializes in that type of work? A. Yes, sir.

Q. And handling matters such as you have testified to on behalf of mining companies, isn't that correct? A. Yes, sir.

Q. And contracts, having to do with final drafts of contracts that may be worked out between mining companies for development? A. Yes.

Q. And joint development projects, possibly, of all kinds? A. Yes, sir.

Q. And the handling of practically all legal matters that pertain to any phase of mining are handled in your office? A. Yes, sir.

Q. And at the present time is there associated in your office [584] a mining company or a number of mining companies, Mr. Johnston?

A. Yes, sir.

Q. For whom you're attorney?

A. Yes, sir.

Q. And could you name those companies for us?

A. Yes, sir; there's the Silver Dollar Mining Company; the Silver Chieftan Company; Hunter Creek Mining Company; Silver Ore Mining Company; a few others that don't amount to much.

Q. And I think you stated that you have done work on and off at numerous times for Mr. Allen?

A. To my best recollection I think I have, over a period of years, yes, sir.

Q. Over a period of years? A. Yes.

Q. And Mr. Allen has consulted you on problems

(Testimony of Elmer Johnston.)

apart from any problems having to do with Lucky Friday Extension and Pilot, has he not?

A. Yes, he has.

Q. He has been interested, you know, in various properties, isn't that so? A. Yes, sir.

Q. You knew that he was interested in the Calahan Consolidated? [585] A. Yes, sir.

Q. You knew likewise that he was interested in the purchase or the acquisition of the Gold Hunter group? A. Yes, sir.

Q. And the Elmore Lou group of claims?

A. Yes, sir.

Q. And likewise in the Lexington properties in Neihart?

A. He told me he was interested in that. I didn't have any knowledge of that except what he told me.

Q. I mean, he's told you?

A. Yes, he told me he was.

Q. And possibly other companies with which he's discussed mutual problems, isn't that so?

A. Yes, sir, including the Hunter Silver Lead Company.

Q. Including Hunter Silver Lead; was that the one that you listed that you had done some work for? A. Yes, sir.

Q. And he did have some interest in the Hunter Silver Lead? A. Yes, sir.

Q. Isn't it a fair assumption that you and Mr. Allen have, over the period of years that you've

(Testimony of Elmer Johnston.)

been acquainted with him, discussed mining problems of all types and descriptions?

A. Yes, sir, many times.

Q. And Mr. Allen has been interested in a variety and [586] numerous ventures in mining, isn't that so? A. Yes, sir.

Q. Now, do you recall, Mr. Johnston, that sometime in the summer of 1945 you and Mr. Allen had several discussions with regard to the Hunter Silver Lead property?

A. We had several discussions with respect to this property, yes, sir. I'm not sure of the date.

Q. You're not sure of the date?

A. No, but we discussed it very thoroughly on several occasions.

Q. He discussed it very thoroughly with you on several occasions, and some of those occasions could have been in the summer or possibly earlier than 1945, would you say that, as your recollection serves?

A. Well, I don't think there were any discussions prior to 1945.

Q. Prior to 1945?

A. It was in the spring of 1945 that this mining activity developed up there and took in a good many properties.

Q. That's correct; during the spring of 1945 there was a tremendous surge, wasn't there, Mr. Johnston, in practically all of those mining properties through the Coeur d'Alenes?

A. Oh, yes, sir.

(Testimony of Elmer Johnston.)

Q. And there were numerous companies formed and there were a [587] number of development projects contemplated and being carried on?

A. Yes, sir.

Q. And in the spring of 1945, I assume, if, as you say, your recollection serves you correctly, Mr. Allen discussed with you probably the Hunter Silver Lead property, or you discussed it with him, I don't know which?

A. I'm sure that in the summer or early summer he discussed with me the Hunter Silver Lead and what he called the Big Hunter property.

Q. And the Big Hunter property?

A. Which was a project that he was thinking about, in which he proposed to put a deep shaft down farther north than our Hunter Creek property, and carry on a big extensive development program there:

Q. He proposed that to you?

A. He talked it over with me. [588]

* * *

Q. (By Mr. Etter): When you talked with Mr. Allen or when he [589] talked with you first about the—did he talk with you about this development that you've mentioned first, or about the Lucky Friday Extension, in relation to time?

A. When we were discussing that three-way contract for the shaft we discussed other shafts and

(Testimony of Elmer Johnston.)

other proposals of all kinds, and at that time Mr. Allen was quite enthused about this so-called Big Hunter project, and we talked at that time, I recall distinctly, in the fall of 1945, when we were negotiating the three-way contract for that shaft work.

Q. And that three-way contract is the one that you testified to on direct examination, Mr. Johnston, is it not, that was concerned with the Hunter Silver Lead, the Lucky Friday Extension, and the so-called Big Friday, lying next to the Lucky Friday Extension, isn't that so?

A. Yes, sir, specifically those three properties.

Q. Specifically those three properties, and those were the three properties particularly that you and Mr. Allen were discussing, isn't that correct, as part of the central development program?

A. I didn't quite understand your question, counsel, but if I may answer by saying that we discussed at that time not only the best way to develop these three properties, but also the possibility of joining others in the venture and locating a shaft at some other place. [590]

Q. I see; in other words, it wasn't just the Lucky Friday Extension and the Big Friday and the Hunter Creek alone, but you talked about other properties at the same time?

A. Well, the Hunter Creek naturally had to decide whether it wanted to go down the Friday shaft or some other shaft, and the Vindicator people—there was all kinds of talk about how to do this job.

(Testimony of Elmer Johnston.)

Q. And that was in connection with the discussions of the Lucky Friday and the Big Friday, isn't that so?

A. Oh, certainly; all phases of sinking were discussed at that time from the standpoint of the companies involved.

* * *

Q. (By Mr. Etter): Did you and Mr. Allen enter into an agreement, [591] tentatively or otherwise, during the summer of 1945 with respect to Mr. Allen doing some representative work for the Hunter Creek people in negotiating this three-way contract you're talking about?

A. No, I don't believe we did.

Q. When did you—did you in the fall discuss that matter with Mr. Allen?

A. Yes, sir. In the fall of 1945 there was so much excitement going on in the district and so much uncertainty as to where and how the Hunter Creek Company and other companies would get together on this matter that it was, I thought, sort of generally agreed that Allen would be a good arbitrator or administrator, the way I recall it, something like that.

Q. You felt that Allen would be a good arbitrator or administrator as between all of the people who were interested in all of the properties?

A. That's right, yes, to settle this question.

Q. And wasn't it your opinion during that time, Mr. Johnston, that that was Allen's position so far

(Testimony of Elmer Johnston.)

as his representation in the Coeur d'Alenes is concerned, as a general arbitrator-administrator between different companies?

A. With respect to this question of where the Hunter Creek Company should go with its shaft, and all the related problems of deep underground development, and in connection [592] with those discussions, he was——

Q. He was?

A. ——in my opinion a sort of a conciliator.

Q. That's right. Mr. Allen had had a great deal of experience in that kind of work and was thoroughly familiar with all the problems, you felt?

A. Well, he was well acquainted with all the parties, and yes, well acquainted with the general—he was making a keen study, as a matter of fact, of the whole situation there; yes, that's right.

Q. And Mr. Dunlop, who you represent, and who is the head of several very successful mines, also talked with Mr. Allen, didn't he, about this same thing?

A. Yes, sir.

Q. And isn't it true that you people, you and Mr. Dunlop, made an agreement to have Mr. Allen do some work for the Hunter Creek, and in return to pay him in stock for the representation that he gave the company in negotiating this deep development agreement?

A. Yes, I believe that's right, yes, sir.

Q. And Mr. Allen pursuant to that did work for the Hunter Creek, didn't he, Mr. Johnston?

(Testimony of Elmer Johnston.)

A. Yes.

Q. And the problems of the Hunter Creek Company were inextricably tied and dependent upon the same problems as [593] those which affected the Lucky Friday Extension and the Big Friday?

A. Yes, sir.

Q. And you and Mr. Allen throughout the fall of '45 and into '46 had numerous conversations in respect to all of these properties, specifically having reference to the Lucky Friday Extension, the Big Friday, so-called, and the Hunter Creek property, is that not so, had numerous conversations as to the progress of the development program?

A. Oh, yes, we discussed it every time we met.

Q. Every time you met, and isn't it true that many of the problems that were associated likewise with Lucky Friday Extension and the Big Friday were bound up with the problems of the Hunter Creek?

A. Oh, yes.

Q. And weren't you interested and Mr. Dunlop and these other people interested just as much in the problems of the Lucky Friday Extension and the Big Friday, because of this program, as you were in the Hunter Creek?

A. Well, no, I wouldn't say we were; we were primarily, of course, handling the Hunter Creek problem.

Q. Of course you were.

A. And we thought that we were very fortunate in getting a deep development program established

(Testimony of Elmer Johnston.)

for this company, and we would be interested in everything that was incidental [594] to that work we were undertaking.

Q. Certainly, and you wanted a smooth operation in any company you associated with, for your own benefit? A. We always want that.

Q. And if there were something that Mr. Allen could do with regard to policy or otherwise in the Little Friday or Big Friday, you wanted him to do it, didn't you? A. Oh, yes, sir.

Q. At any time? A. Yes, sir.

Q. And many times when those problems came up that's exactly what you asked Mr. Allen to do, isn't that right, to do with either of those two companies to eliminate an obstacle to the program?

A. Well, I don't know of any particular problems, counsel, except as I said before, in connection with negotiating the shaft agreement and incidental smooth operations thereunder, but he wasn't delegated as a trouble-shooter or anything like that; I think the incidents were pretty well closed when the shaft contract was signed up.

Q. That was when?

A. In the fall of '45.

Q. Wasn't there further discussion with Mr. Allen following the fall of '45?

A. You mean officially? [595]

Q. Yes, as between——

A. There was discussions with Mr. Allen, general discussions of mining operations, every time we met.

(Testimony of Elmer Johnston.)

Q. That's correct.

A. And we talked about every property in the district——

Q. And when you weren't—pardon me, did you want to finish?

A. And I knew that he was interested in other properties.

Q. And when this three-way contract was completed that you're talking about, isn't it so that then, in conjunction with the contract existing between the Big Friday, the Lucky Friday Extension, and the Hunter Creek, there was further discussion with Mr. Allen with regard to his acquisition of the Gold Hunter property?

A. Yes, there was, because Allen contended for a long time, he may still contend, that he could get the Big Hunter property, buy it; he went to Chicago for that purpose, I understand it, and he brought the subject up many times, to try and interest adjoining properties if he could get them interested in some project up there.

Q. And those adjoining properties included these properties you've told us about that were involved in this three-way agreement, isn't that right, involved those properties?

A. Yes; you know, it was just ordinary conversation; I don't want to say that the board of directors sat down and formally considered any matter, because they were committed [596] to a shaft program, but there was all kinds of talk about it.

(Testimony of Elmer Johnston.)

Q. And Mr. Allen was the central figure?

A. He was doing a lot of it.

Q. Now, in January, 1946, isn't it true that your company, the company you represented, the Hunter Creek Mining Company, gave Mr. Allen 100,000 shares of the Hunter Creek stock for his work and what he'd done in helping negotiate on this deep shaft development with these three companies?

A. Yes, sir.

Q. And do you recall offhand what the certificate numbers were?

A. No, sir.

Q. But you do know that Mr. Allen received 100,000 shares from Hunter Creek during the fall of 1945?

A. Yes, sir, that's right.

Q. For the work he performed for the company?

A. It was our portion, yes, of the expense for this work, and we felt it was a very fine bargain, and we got a fine deal for what it cost us.

Q. And you knew at the time you paid Mr. Allen the 100,000 that he was also working in the interest of the other two companies, isn't that right, or did you know that?

A. Well, yes, I assumed he was trying to get everybody [597] together; there was repeated rows and fights, and the details had to be thrashed out, and hurriedly, because the time was running short.

Q. And Mr. Allen thrashed them out?

A. Yes, sir, and we drove the shaft down 400 feet, and many other matters of equipment, mill sites, hoisting equipment, many important factors

(Testimony of Elmer Johnston.)

had to be settled, because the companies had to buy new equipment in many instances, on account of us coming into the picture.

Q. And Mr. Allen tended to those matters?

A. No, I don't think he had anything to do with that.

Q. I mean those matters which might have affected his particular part in it?

A. They were discussed and settled.

Q. All right. I would like to hand you Plaintiff's exhibit 81, Mr. Johnston, and direct your attention to a page that appears hereon, and have you look at it for just a minute, and ask you if you're familiar with it?

A. Yes, I am. It's a three page document, but I think I'm fairly familiar with it.

Q. And is that the—would you say a description or condensation, if you want to call it, of the work or the culmination of the agreement or work problems between the Lucky Friday, the Big Friday, and the Hunter Creek? A. Yes, sir. [598]

Q. And would you say that that was the matter upon which Mr. Allen was working for those companies? A. Yes, sir.

Q. And that was the culmination, was it not, of his efforts? A. Yes, sir.

Mr. Etter: With the Court's permission I would like to read this to the jury.

The Court: You may.

(Testimony of Elmer Johnston.)

(Whereupon, Mr. Etter read a portion of Plaintiff's Exhibit 81 to the jury.)

(Whereupon, a memorandum was marked Defendant's Exhibit E for identification.)

Q. Mr. Johnston, I would like to hand you the Defendant's identification E, and ask you if you recognize what that instrument is? Are you able to refresh your memory?

A. It seems like a typewritten memo of some of the things we discussed about July, 1945. I don't know whether it was made in my office or whose office it was made in, but it appears to be a memo. It probably was written in my office.

Q. You've seen the memo before?

A. I believe I have. Those look like my figures on the side there.

Q. And it refers to conversations that you and Mr. Allen were having about the three-way agreement which we just discussed? [599]

A. Well, I don't know what the date is here, I don't know whether that's a correct date, but it's a sort of a memo of some of the things we were discussing that took place during that time.

Q. And those were some of the things, isn't that right, that you wanted Mr. Allen to keep in mind in that negotiation?

A. Well, I'd say I wanted him and everybody else to keep them in mind.

(Testimony of Elmer Johnston.)

Q. This was your position and this was what you people wanted to obtain?

A. I'm not sure about that, counsel, but it's certainly a memo of the things we were talking about.

Q. And you remember the memo distinctly?

A. No, I haven't an independent recollection of this memo, but I remember it contains the items we were discussing.

Q. And you think these are your figures over here?

A. They look like my notations on the side, yes, sir.

Mr. Stocking: No objection.

The Court: Is it offered?

Mr. Etter: I'd like to move that this exhibit be admitted.

The Court: Exhibit E is offered, there's no objection; admitted.

(Whereupon, Defendant's Exhibit E for identification was admitted in evidence.)

Q. (By Mr. Etter): During the time or at about the time, I'll direct your attention to the approximate time that these events were occurring and that you were having these discussions with Mr. Allen, Mr. Johnston, and I'll ask you if at that time Mr. Allen didn't make some mention to you of the fact that he was under temporary civil injunction on behalf of the Securities & Exchange Commission?

(Testimony of Elmer Johnston.)

A. The time he mentioned that to me was when he and I and Keane were talking in the hotel in April or May, 1945.

Q. April or May of 1945?

A. That was the only time that I recall that it was ever brought up.

Q. Well, now, don't you recall that some time later Mr. Allen talked with you about that matter independently of the presence of any other individual, Mr. Johnston?

A. He may have.

Q. And didn't he come to you and say that he felt that you had a pretty good working knowledge of S. E. C. regulations and wanted to know whether you could investigate the possibility of accelerating the lifting of the civil injunction, rather than waiting until its automatic expiration, which was sometime in June of 1946?

A. That could have happened, counsel.

Q. And at that time do you recall that you called Mr. James Newton, who was then chief attorney of the Securities & [601] Exchange Commission in Seattle, but who is now regional director of that office, in respect to the matter?

A. I believe I did; I believe I did.

Q. Beg pardon?

A. I believe I did.

Q. And isn't it true that during that conversation Mr. Newton in the Securities & Exchange Commission office in Seattle told you that in his best judgment he felt that the civil injunction would have to run its natural course, and that be-

(Testimony of Elmer Johnston.)

fore he could give you any word or assurance one way or the other, he would have to take such a matter up with the offices of the Commission, which were then in Philadelphia, Pennsylvania?

A. Yes, I believe that's right.

Q. And isn't it true that for the services that you rendered him at that time Mr. Allen paid you a fee in regard to that matter, if you recall?

A. No, I don't recall that he did.

Q. You don't recall it? A. No.

Q. But after recollection, would you make the statement that he didn't pay you a fee?

A. No, sir, I would not.

Q. You just don't remember?

A. I don't remember? [602]

Q. Now, these discussions that he had with you, Mr. Johnston, and that you had with him, and that in turn you had with Mr. Newton of the Commission in Seattle, those discussions were all prior to any work which was done on the organization or otherwise of the Lucky Friday Extension and the Pilot companies, isn't that correct?

A. No, I don't think so—I don't recall, counsel.

Q. Well, as a lawyer, Mr. Johnston, would you know of any particular reason that Mr. Allen would ask you to call Mr. Newton of the Commission and inquire about these matters having to do with this civil injunction?

A. The first time I knew that he had an injunction was the time that he brought it up in the

(Testimony of Elmer Johnston.)

hotel. I had no knowledge of it before that at all.

Q. But there had been no promotion and no organization of the Lucky Friday Extension, or there was no working agreement at that time between the Big Friday and the Extension or the Hunter Creek, was there? A. No.

Q. And did Mr. Allen tell you what his purpose was when he talked to you about this civil injunction and asked you to take the matter up with Mr. Newton?

A. Well, as I recall, sometime during that summer of 1945 he talked to me about the matter and wanted to get it lifted.

Q. And why did he say he wanted to get it lifted? [603]

A. So he could take part in the activities of these companies.

Q. Take part within the purview of the Securities & Exchange Commission regulations?

A. Yes.

Q. And you called up and told him, I suppose, what Mr. Newton said? A. Yes, I did.

Q. And what did he say to that?

A. I don't recall.

Q. And you advised him, I suppose, that he couldn't participate in any capacity prohibited by the Commission regulations or by the Securities Act? A. Yes, sir.

Q. You advised him of that matter?

A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. Now, when he came down to talk with you about Lucky Friday Extension was it your opinion as a lawyer well acquainted with these matters that he was acting in any capacity prohibited by the regulations?

A. No, I thought he was acting in good faith.

Q. And you thought he was acting in good faith as to all of the companies?

A. Which I filed papers for, yes, sir.

Q. And when you filed these papers, the prospectuses of the Pilot Silver Lead and the Lucky Friday Extension, you had [604] complete confidence that what you were putting in there was a correct representation as you understood it?

A. At that time, yes, sir.

Q. And your entire experience in the practice of law has been with matters of this kind, haven't they, Mr. Johnston?

A. Yes. In addition to that, I had confidence in Mr. Keane, and there was Mr. Gyde, connected with the company, and Mr. Horning, and I believe Mr. Wayne, there were plenty of lawyers, and their activities were all right there around the Gyde-Taylor Building, and I had no reason to be apprehensive. I figured they understood the law and his position, and they would follow it.

Q. And it was your position, where you stated that Mr. Keane was the dominant participant, as we——

A. Principal promoter.

Q. When you filed this prospectus, Plaintiff's exhibit 68, and wherein you made the statement,

(Testimony of Elmer Johnston.)

Mr. Johnston "The company was promoted through Mr. F. C. Keane, and its activities to date have been completely controlled and dominated by him," that was your opinion of the matter?

A. That certainly was, yes, sir.

Q. And he was controlling and dominating it when you filed this, wasn't he?

A. I thought he was.

Q. What made you think he was? [605]

A. Upon his own personal representations to me, the statements of Mr. Grismer, and the activities of getting the thing set up.

Q. All right. Now, the statements that he made to you, what statements did he make to you about it?

A. That he was going to be the one that would run it and look after it.

Q. That he was what?

A. He was going to be the one that would run it and look after it.

Q. And what did Mr. Grismer say about who was going to run it and look after it?

A. He and Mr. Keane.

Q. Did either one of them say Mr. Allen was going to run it? A. No.

Q. Did either one of them say that Mr. Allen was rendering any aid or assistance?

A. They never discussed that with me.

Q. Well, Mr. Grismer told you that Mr. Allen was helping Mr. Grismer?

A. Yes, they were working together.

Q. As a matter of fact, after these first meetings

(Testimony of Elmer Johnston.)

with Keane, he brought Mr. Allen into your office and told you he was?

A. Yes, he did, they were working together. [606]

Q. And at that time, knowing what you knew, and taking into consideration the conversations that you had with Mr. Grismer and Mr. Keane, and the statements of Mr. Keane that he was running the show, or that Mr. Grismer was running the show, considering all that, when Mr. Grismer came in and advised you Mr. Allen was giving him some help did you change your opinion any of who was dominating the company? A. No, sir.

Q. And did you think the work Mr. Allen was doing, or the advice he was giving Mr. Grismer, was such advice or participation that was prohibited by any regulations of the Securities & Exchange Commission that covered it?

A. Not at that time, no.

Q. And did Mr. Keane ever tell you in all of these early negotiations that Mr. Allen had anything to do with incorporating this company?

A. No.

Q. Did he ever tell you that Mr. Allen had anything to do with promoting the company?

A. No.

Q. Did he ever tell you that Allen was going to have anything to do with the stock? A. No.

Q. Or did Mr. Grismer tell you any of those things? [607] A. No.

(Testimony of Elmer Johnston.)

Q. Did Mr. Keane ever talk to you about Mr. Allen's particular participation on behalf of the companies who were generally associated up through that area? Did Mr. Keane ever mention that to you?

A. I didn't quite get the import of that question, counsel.

Q. Well, I kind of forget it myself.

(Whereupon, the reporter read the last previous question.)

A. I don't recall any independent conversations of that kind.

Q. Now, you prepared, did you not, the prospectus of the Lucky Friday Extension Mining Company?

A. Yes, sir.

Q. And you and Mr. Keane were the attorneys?

A. Yes, sir.

Q. Did Mr. Keane, as the attorney for the company in conjunction with you, while you were both attorneys for the company, did Mr. Keane tell you that Mr. Allen was promoting this company?

A. No.

Q. And you and Mr. Keane of course worked fairly close on the problems of the company, or did you do most of the work, Mr. Johnston?

A. Well, I did most of it.

Q. Well, Mr. Les Randall of Wallace, Idaho, a certified [608] public accountant, was your auditor, was he not?

A. Yes.

Q. Did Mr. Randall ever say anything to you

(Testimony of Elmer Johnston.)

about the participation of Mr. Allen in the promotion or organization of this company?

A. No, he didn't.

Q. And did Mr. Lakes of Spokane, Washington, say anything to you about Mr. Allen participating in any activities prohibited, as they understood it, by the regulations?

A. Mr. Lakes and I never discussed anything except geology and engineering matters.

Q. In other words, he never discussed that with you at all? A. No.

Q. And the statements that were made as you understood them at the time you filed this prospectus were a true representation of the particulars and facts involved in the prospectus?

A. Absolutely, yes, sir.

Q. And as you stated, ordinarily these prospectuses are not required to be filed under this particular type of promotion? A. Yes, sir.

Q. But as you say, it has been your practice to file them anyway.

A. I wanted to publish everything that I could think of that [609] was material, that the stockholder should know before he bought the stock, and I printed it, published it, and broadcast it.

Q. And you as an attorney investigating it and knowing all the facts, put the conclusions that you have put in these two prospectuses?

A. Yes, sir, they're my conclusions.

(Testimony of Elmer Johnston.)

Q. From all the facts?

A. From the facts that I could gather, yes, sir.

* * *

(Whereupon, at 12:05 o'clock p.m. the Court took a recess in this cause until 1:30 o'clock p.m.)

Friday, June 10, 1949, 1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

Cross-Examination

(Continued)

By Mr. Etter:

Q. Mr. Johnston, I'm going to hand [611] you the Plaintiff's Exhibit 8-i-1, I believe it is, which you've previously identified as a check that you received from Mr. Allen——

A. Yes, sir.

Q. ——with the notation "Photo airplane trip"——

A. Yes, sir.

Q. ——and I think if I recall correctly your testimony was that that was partial payment for that expense, is that correct?

A. Yes, sir.

Q. When you said "partial payment" would you explain, Mr. Johnston, what you meant by that?

A. Well, I think a general set of pictures were taken for use in any future work that would be done, and the photographer was instructed to pho-

(Testimony of Elmer Johnston.)

topograph all that territory around the Mullan district.

Q. Including all of the area that has been discussed here this morning? A. Yes, sir.

Q. The companies that might be prospectively included?

A. Yes, sir. He took a number of pictures.

Q. And that was a particular share of it that was paid by Mr. Allen? A. Yes, sir.

Q. And other companies paid like shares, either larger or [612] smaller, depending on the ultimate cost?

A. I don't recall now what other companies paid, but there were other companies paid a portion.

Q. I might ask you preliminarily, Mr. Johnston, this picture that you're referring to that was taken, that wasn't an ordinary photograph or something like that, was it?

A. No, it was taken by an aerial photographer, a flyer.

Q. That was an aerial picture that was taken of the area? A. Yes, sir.

Q. An airplane and photographer were hired and flew up there to take this picture?

A. Yes, sir, together with the photographer. We hired Libby the photographer with all the necessary equipment.

Q. Taken from the air?

A. Yes, sir, taken from the air.

(Whereupon, aerial photo of area involved was marked Defendant's Exhibit F for identification.)

(Testimony of Elmer Johnston.)

Q. Now, I'm going to hand you Defendant's exhibit marked F, and ask you if you recognize that picture, Mr. Johnston?

A. Yes, I recognize it.

Q. Will you state what picture that is?

A. That is one of the pictures taken of this area.

Q. Is that an aerial picture, Mr. Johnston?

A. This is an aerial photographer's picture, yes, sir.

Q. And you're familiar, are you, Mr. Johnston, with the [613] terrain, generally speaking, in the area covered by that picture? A. Yes, sir.

Q. And would you just generally tell us what mining companies mentioned here are included in that picture for which contribution was made, if you recall?

A. Well, as I said, I don't know who all contributed to the cost, I can't recall that, but I do know that this picture covers the ground embraced in the Big Hunter mining property, the Hunter Creek, the Lucky Friday, the Lucky Friday Extension, a part of the Pilot, Vindicator——

Q. Independence in there?

A. And the Independence, Independence is right out in front, yes, sir, and the town of Mullan, and the Federal Mill at Mullan.

Q. That would include practically what we call the entire dry belt, is that it, there, or the undeveloped area of that belt?

(Testimony of Elmer Johnston.)

A. That's probably a better description.

Q. And this is, as you say, one of the pictures involved?

A. Yes, sir.

Mr. Etter: At this time, your Honor, I'd like to move the admission of Defendant's F.

Mr. Stocking: We have no objection.

The Court: Exhibit F admitted, no objection.

(Whereupon, Defendant's Exhibit F for identification was admitted in evidence.)

Q. (By Mr. Etter): Now, Mr. Johnston, during the summer of 1945 were you acquainted with the condition of the local stock exchange as it related to mining stocks and issues thereof, of mining stocks?

A. To some extent, yes, sir.

Q. And to what extent, Mr. Johnston?

A. Well, it depends upon what you mean by being "acquainted."

Q. I mean were you interested at that time because of your representation of these mining companies, in the stock exchange, that is, as to the values of mining stocks at that time?

A. I knew that in a general way that stocks were being traded and bought and sold at certain bid and ask prices. I had no independent knowledge of their respective values.

Q. But as values at least on the exchange you had knowledge of that?

A. Yes.

Q. As indicated by the exchange?

A. Yes.

Q. And would you say that there was a con-

(Testimony of Elmer Johnston.)

siderable activity in the metal market at that time, in stocks being traded on the Standard Stock Exchange, or little activity?

A. There was very much activity. [615]

Q. There was very much activity; in fact, it was one of the periods where the market in Spokane has been the most active in its history, isn't that correct?

A. I believe that's right; I never saw anything like it in my experience.

Q. And you've been acquainted with this thing for many, many years? A. Yes, sir.

Q. And have watched the market quite closely?

A. Yes, sir.

Q. Isn't it true as far as most stocks were concerned there was a terrific demand for all metal stocks, mining stocks?

* * *

A. There was a good strong firm demand, yes, sir.

Q. There was a good strong firm demand. How was that reflected, Mr. Johnston, in the price of the stocks? A. They were bid up daily.

Q. They were bid up daily? A. Yes.

Q. And that was true of Pilot Silver, was it, at the time of the issue of Pilot Silver?

A. Yes, sir.

Q. And that was true of Lucky Friday Extension? A. I believe so.

(Testimony of Elmer Johnston.)

Q. And also true of the Big Friday stock?

A. Yes, sir.

Q. And was it true of not only those stocks, but practically all the mining stocks that were being traded?

A. Yes, sir, there was an upward sweep going on.

Q. A uniform trend in the market?

A. Yes.

Q. That was a condition general to the entire market, and not to separate restricted stocks?

A. Yes, sir.

Mr. Etter: That's all. [617]

Redirect Examination

By Mr. Stocking:

Q. In that connection, though, and with respect to these particular stocks, Mr. Johnston, was it a fact that the execution of this contract had some bearing on the rise in price of the Extension stock?

A. Yes, sir, it had a decided effect, in my opinion.

Q. And the fact that they began operations under this contract?

A. Yes, sir. Each stock went up according to the merits or the potential activities at the property, and that was the situation with respect to Friday Extension.

Q. Now, when you were answering Mr. Etter on cross-examination in regard to your opinion as to the legal effect of Mr. Allen's relationship, if any, with these companies, I noticed that you restricted

(Testimony of Elmer Johnston.)

your answer to the opinion at that time, is that correct? A. Yes, sir.

Q. And now, don't answer this question until—and answer this question yes or no, and don't answer this question until counsel had an opportunity to object, but have any facts come to your attention since that time which would cause you to change your opinion as to the legal effect of Allen's relationship to these companies?

Mr. Etter: I'm going to object to that question, your Honor, as calling for a conclusion and interfering [618] with the province of the jury, and not only that, the question doesn't specify all the facts, but barely asks whether he has certain facts, and it isn't proper, because it pre-supposes that he has without any proof that he knows all the facts that have been brought out or will be brought out in this trial, and he's in no position to testify to that.

The Court: Well, I'm satisfied that if this witness has changed his opinion, that that's not material. I'll sustain the objection. It will be for the jury to determine, after it knows all the facts, what its opinion is.

Mr. Stocking: That's all.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.)

FRANCIS CLAYTON KEANE

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Mr. Herman: If your Honor please, may I address the Court?

The Court: You may.

Mr. Herman: Mr. Richard S. Munter and I are counsel of record for Mr. Keane, who has entered a plea of nolo contendere. I would like the Court's permission for myself this afternoon and for Mr. Munter and myself [619] on Monday to be present in court while Mr. Keane is testifying, for the purpose of advising him relative to any questions that may present themselves in connection with his testimony.

The Court: You are permitted to be in attendance.

Mr. Herman: And in that connection may I say to your Honor, because a plea of nolo contendere has been entered I am not nearly so familiar with the facts and the issues in this case as I would have been were I ready for trial, and under the circumstances, should our client conceive that any question was not within the issues or was not proper, may he have the court's permission to confer with me on that?

The Court: I see no reason now why he should not.

Mr. Herman: Very well, your Honor.

The Court: Until the Court may direct otherwise he may have that continuing permission.

(Testimony of Francis Clayton Keane.)

Mr. Herman: Thank you, your Honor.

The Court: You may proceed.

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. F. C. Keane.

Q. That's Francis Clayton Keane?

A. Clayton Keane is the way that I designate it.

Q. You are one of the defendants named in this indictment? [620]

A. I am.

Q. And where do you reside?

A. Wallace, Idaho.

* * *

Direct Examination

(Continued)

By Mr. Stocking:

Q. What is your business or occupation in Wallace?

A. I'm an attorney.

Q. And how long have you resided there?

A. For about nineteen or twenty years.

Q. Do you know the defendant Allen?

A. Yes.

Q. How long have you known Allen?

A. About eighteen years, or a little more.

Q. Did you have business dealings with the defendant Allen over this period of time?

A. No.

Q. When did you first begin having business dealings with Allen?

(Testimony of Francis Clayton Keane.)

A. Sometime in the latter part of 1942 or the spring of 1943. [623]

Q. What was the transaction or business transaction you entered into?

A. He was vice president, I think, as I recall it, in charge of operations of the Callahan Consolidated Mining Company, and I was employed to do certain work for that company at that time, and consequently had relations with Mr. Allen.

Q. And now, at about that time or shortly thereafter, were there any other business relations with Mr. Allen in connection with the Montana Leasing Company?

A. Not prior to sometime in the late spring of 1943.

Q. And what was the transaction then that involved the Montana Leasing Company?

A. We organized or formed a corporation in the state of Montana for the purpose of operating and running some dumps located contiguous to the Lexington Mining Company's property at Neihart, Montana.

Q. And who were the principal parties that were interested in organizing that company?

A. Allen and myself. There was a man by the name of William Mullen who is since deceased, who was also interested in it.

Q. And did you then thereafter carry on some mining operations over there under the name of the Montana Leasing Company?

(Testimony of Francis Clayton Keane.)

A. Under the name of the corporation we carried on operations [624] up to, as I recall it, October 5 of 1943, at which time we commenced operating as a partnership under the firm name of Montana Leasing Company.

Q. The same name as the corporation?

A. That's correct.

Q. And what work was being done by this Montana Leasing Company then?

A. Well, at the time that we ceased running the dumps, they weren't paying, we started an exploratory program which consisted of a drift of approximately—not a drift, or it possibly was a drift, I guess it was a drift, as I think of it, over a distance of about 3,000 feet or some such distance.

Q. And what was the situation with regard to the operations of the Montana Leasing Company in the early spring of 1945, and I'm speaking particularly of the financial situation?

A. We had spent a large sum of money; we were in the hole.

Q. You were in financial difficulties?

A. That is correct.

Q. Now, are you familiar with the Lucky Friday Extension Mining Company? A. Yes.

Q. And who were the organizers of that company? A. Jim Allen and myself. [625]

Q. And when was that company first conceived?

A. Some time shortly prior to the time that it was organized.

(Testimony of Francis Clayton Keane.)

Q. Can you remember any discussions about that with Mr. Allen or with anyone else in Mr. Allen's presence?

A. I recall discussions with reference to it with Mr. Allen. The first time that it was called to my attention, Mr. Allen had been up to John Sekulic's, and he'd stayed there that night, and came down to Wallace; Sekulic lives at Mullan, which is approximately seven miles from Wallace; came down to Wallace to the hotel and called me and told me about this conversation he'd had with Sekulic, and that Sekulic had this ground which ultimately was placed in or one of the main assets of the Lucky Friday Extension.

Q. What did he propose to do with this ground?

A. That we incorporate it and dispose of the stock and bail ourselves out.

Q. By that expression, what do you mean by that expression?

A. Well, I understood that he necessarily, and I have used the expression myself, we meant that we would pay back certain monies that we owed.

Q. And you were going to make some money out of the promotion of the Lucky Friday Extension Mining Company if you could?

A. That's correct.

Q. Do you know the defendant Grismer?

A. Yes. [626]

Q. How long have you known him?

A. Maybe eight, nine years.

(Testimony of Francis Clayton Keane.)

Q. And did he have some connection with the Lucky Friday Extension Mining Company?

A. Yes.

Q. When did he come into the picture?

A. After Allen and I had discussed the details incident to its creation, and what we were going to do with it.

Q. And then did you have any discussions with Grismer about his part in the transaction?

A. Very few.

Q. Did you have——

A. I might add by way of explanation there that Mr. Grismer had worked for Mr. Allen for a considerable period of time, manager of the operations being carried on by the Callahan Consolidated, and I always regarded Mr. Grismer as Mr. Allen's man, and consequently I had very few conversations with him about what we intended to do or anything else in connection with it.

Q. Now, in connection with the proposal to make a public offering of stock, that you said was the proposal that was made?

A. Well, that was our understanding, that that's what we were going to do with it, yes. We discussed it.

Q. Now, were there any discussions between you and Mr. Allen [627] as to any limitations on Mr. Allen entering into that sort of a proposal?

A. I knew that he had an injunction against him growing out of some operations of Callahan Con-

(Testimony of Francis Clayton Keane.)

solidated stock, and that as a consequence he couldn't appear as a promoter in the transaction.

Q. Did you discuss that with Mr. Allen at the time?

A. Possibly, and possibly not. It was discussed on a subsequent occasion, I know. I think that it probably was discussed prior to that time, too, when we were choosing the people that we would put in the corporation as officers.

Q. Was there some consideration then as to whether or not Mr. Allen would be an officer of the company?

A. We both understood that he couldn't be.

Q. What part did you have in connection with the public offering, the arrangements for the public offering of the stock?

A. Well, I did incorporate, or at least the papers were prepared in my office for the incorporation of the company, by-laws, and matters of that kind, otherwise my connection with it was nil. I knew, however, the way it was being handled.

Q. When you prepared the articles of incorporation was Mr. Allen there at that time? [628]

A. I couldn't say. We had discussed the amount of capital stock, the price it was going to be, the price at which each share of stock was fixed, and matters of that kind, and we had also discussed the matter of who the officers of the company would be after it was incorporated.

Q. And by "we" who are you referring to?

(Testimony of Francis Clayton Keane.)

A. Mr. Allen and myself.

Q. Now, in the prospectus, Lucky Friday Extension prospectus which is an exhibit in this case, Plaintiff's 69, it is indicated that a million shares were to be offered to the public, and that 500,000 shares were to be taken as attorneys' stock for Elmer Johnston and F. C. Keane, and that 1,229,700 shares had been issued for mining claims and real estate, to Mr. Grismer. Now, who made the arrangements for that allocation of the stock?

A. Mr. Allen and myself.

Q. And what portion of that stock was to go to you?

A. Out of—I've forgotten what the figure, was it 300,000 that was to come to me?

Q. There's 500,000 shares to go to Elmer Johnston and F. C. Keane.

A. All right; 75,000 shares of the issuance to Mr. Johnston was to be retained by him. The 425,000 shares remaining was Allen's and my property.

Q. And that stock was issued in a block to Mr. Johnston, a [629] 200,000 share block?

A. I don't recall the actual detail of the issuance of the stock. I know that that's the way it was handled, however.

Q. What about the 1,229,700 shares that were issued to Mr. Grismer?

A. Mr. Grismer was to receive 100,000 shares of the stock for his interest in the company. The balance of it belonged to Allen and myself, subject to certain commitments that had been made with

(Testimony of Francis Clayton Keane.)

reference to the other parties, for instance, Sekulic and others that were interested in it.

Q. Now, after the money came in from the promoters or from the underwriters in this first public offering of the Extension stock, who handled those funds? A. I did.

Q. They were banked——

A. Under the name of the Friday Extension, and I had the check on them.

Q. You had the check?

A. Yes. I wrote the checks, or at least they were written by either myself or by myself or Mrs. Vermillion, under mine or Mr. Allen's arrangement and direction.

Q. Now, there was some testimony here by Irene Vermillion that on some documents or checks she had written the name "F. C. Keane." Did you give her authority to write that name? [630]

A. She still writes most of my checks by signing my name to them.

Q. She has that authority?

A. She has at all times had that authority. I think that originally she wrote a few checks and signed them "Irene Vermillion" and I believe that I told her I preferred to have her sign them in the future, just sign them "F. C. Keane."

Q. Attached to the Defendant's Exhibit C, Mr. Keane, which has been admitted in evidence, is a financial statement regarding the Lucky Friday Extension Mining Company which reveals that begin-

(Testimony of Francis Clayton Keane.)

ning on July 28, 1945, and continuing until May 17, 1946, a number of checks totalling \$113,000 were issued to Montana Leasing Company and its successor, Lexington Silver Lead Mines, Inc., that was the name of the successor company? A. Yes.

Q. What have you to say as to the checks which were issued to Montana Leasing and Lexington Silver Lead Mines, Inc., in that amount?

A. We regarded them as loans from the Extension to the Montana, the partnership of the Montana Leasing Company and its successor, or the partnership's successor, the Lexington Silver Lead Mines, Inc.

Q. When you say "we" who are you referring to? [631]

A. Mr. Allen and myself. Whenever I use the word "we" unless I specify to the contrary, it would be so understood.

Q. Well, I think you'd better state who you mean by "we."

A. All right, I'll try to, Mr. Stocking.

Q. And a number of these checks which are contained in Plaintiff's Exhibit 6 for identification bear the signature "Irene Vermillion." At whose direction was she acting when she issued those checks?

A. Either Jim Allen's or myself.

Q. Were any instructions given to her, specific instructions given to her with regard to the issuance

(Testimony of Francis Clayton Keane.)

of checks into the Montana Leasing Company account? A. Yes.

Q. What were those instructions?

A. She was told to do it.

Q. Was she told each time that a check was issued?

A. No. Her general instructions were to take funds from whatever source we had them, that were available, to cover checks that were outstanding.

Q. And you were carrying on a mining operation with the Montana Leasing Company during this period? A. We were.

Q. You had a payroll to meet over there?

A. We did.

Q. Was it a very large payroll? [632]

A. It run ten, twelve, fifteen thousand a month.

Q. And was this the largest source of funds which went into the Montana Leasing bank account to meet that payroll?

A. What do you mean? I don't quite follow you.

Q. I mean this \$113,000; was that the largest source of funds?

A. It was one of them, it was one of the large ones.

Q. Can you identify Plaintiff's Exhibit 8, a file containing Plaintiff's exhibits for identification 8-a to 8-o inclusive? A. Yes, I can.

Q. What are those exhibits?

A. They're bank statements, including cancelled

(Testimony of Francis Clayton Keane.)

checks written by either the Montana Leasing Company or the Lexington Silver Lead Mines, from a period starting in July of 1945 to July of 1946.

Q. Yes; I think there's one here for June.

A. Yes, the first one is June of 1945.

Q. Through July of 1946—wait a minute—yes, here's 8-o for August, 1946, is that correct?

A. August of 1946, yes.

Q. And you had custody of these records?

A. I did.

Q. You turned them over to the Securities and Exchange Commission? A. To Mr. Denney.

Q. And now with respect to the condition of the account of Montana Leasing Company, the bank account of Montana Leasing Company, what can you say with respect to that account and to the dates of the withdrawals of various amounts here shown on Defendant's Exhibit C?

A. I don't quite follow your question.

The Court: Defendant's Exhibit?

Q. Defendant's Exhibit C. These are a list of the checks. My question was framed as to what was the condition generally of the Montana Leasing bank account at the time any of these checks were written?

A. It had funds on hand to pay them.

Q. No, I don't mean that. I'm not talking about the Extension bank account, I'm talking about the condition of the Montana Leasing bank account.

A. Well, as a rule it was short of money or we

(Testimony of Francis Clayton Keane.)

wouldn't be putting it in there. Either of those two accounts, the Montana Leasing Company or the Lexington Silver Lead account were either in a precarious position or practically there, knew they were going to be in a day or two, at any rate.

Q. A number of overdrafts, as a matter of fact, appear on the bank statement?

A. Well, they appear there, but I don't believe except on an occasion or two when I made arrangements for those overdrafts [634] to be carried, were we overdrawn; checks would come in, and we'd be notified they were in, and arrangements would be made to cover them during that day, so that actually while the bank books show an overdraft, it actually was not an overdraft; they had funds on hand to pay those checks.

Q. You were notified by the bank of an overdraft?

A. That's right.

Q. And on that occasion would the funds be transferred from the Extension?

A. Or the Pilot, or whatever we had.

Q. And the Pilot at a later date in the same manner?

A. That's right.

Q. Did you ever have any discussions with Mr. Allen about the return of any of these funds to the Extension Company or Pilot?

A. Yes.

Q. What were those discussions?

A. Well, until such time as we did organize the Friday X or the Extension we felt and still felt that the operation in Montana would prove successful.

(Testimony of Francis Clayton Keane.)

We were advised by reliable sources that we had at least a quarter of a million dollars profit over there, which was ample to repay what we owed.

Q. Was there any other discussions—— [635]

A. No. Oh, we had numerous discussions about how much money we were losing, and matters of that kind, yes.

Q. What was the conclusion after these discussions as to repayments of any of these monies?

A. At all times it was understood that we were going to repay in some way or the other.

Q. Now, the record shows that there was some of this money returned to these companies. What were the circumstances under which those monies were returned?

A. They were down and needed money, had to have money?

Q. When the Extension account got down some money was then returned to the Extension, is that correct?

A. That is correct.

Q. Was that true also of the Pilot?

A. That was.

Q. So a small amount of money was paid back?

A. Yes.

Q. And the records will show what those exact amounts were?

A. Yes.

Q. You don't have them in mind?

A. No, I haven't them available.

Q. Now, going to the Pilot Silver Lead Mines,

(Testimony of Francis Clayton Keane.)

Inc., what have you to say with regard to the formation of that company?

A. Well, Grismer and four or five associates, four other men, [636] I think, owned that ground up there. We knew about it, and finally Mr. Allen and I had a discussion about it, or had numerous discussions about it; we determined to handle it in the same manner that we had handled the Extension.

Q. Who made the arrangements as to what stock should be issued for promotion stock in that company?

A. Allen and myself.

Q. Who took the responsibility of acquiring the properties for the company?

A. Allen.

Q. Did you meet Mrs. Phelan?

A. I met her once, at the time that she made a transfer of the claims that she owned, in my office. Now, I think the deed was drawn there, and I was busy in another office, and I walked out for a few minutes and shook hands with her, and if I recall, Mrs. Vermillion wrote her the check on my personal account in payment for it, and I just casually met her.

Q. That was a six hundred dollar check?

A. A six hundred dollar check, if I recall correctly.

Q. But you had no conversation with her with regard to what the terms of her agreement would be?

A. No, the deal was made at the time with her, and the only thing left to do was to pay her the

(Testimony of Francis Clayton Keane.)

money, and if I recall correctly the deed was being prepared at the very time [637] that I did meet her.

Q. Did you have any discussions with Mr. Allen concerning the terms of this deal?

A. I knew what they were, yes.

Q. Did he inform you what the deal was going to be? A. Yes.

Q. And you agreed to it? A. Yes.

Q. Now, how about the situation with regard to Mr. Herrick? Did you have any dealings with him?

A. Not until after that deal was consummated, I think, and paid him the \$5,000.

Q. And these transactions both go to the acquisition of the property by the Pilot?

A. One group was known as the Cincinnati group, that was the Herrick one, and the Phelan group was Mrs. Phelan's.

Q. Now, of the Pilot stock, the prospectus, Plaintiff's Exhibit 68, which has been admitted in evidence, shows that there was issued to you a total of 670,000 shares "of which amount Mr. Keane will retain 550,000 shares for his promotional efforts in connection with the acquisition of the Cincinnati group and the Phelan group, and the assignment to the company of the five unpatented claims which were located by him." Now, who was to get the ownership of those 550,000 shares? [638]

A. I beg your pardon?

Q. Whose shares were those to be, those 550,000?

A. Allen's and mine.

(Testimony of Francis Clayton Keane.)

Q. Then you were to transfer part of the remaining stock to Mrs. Phelan and to the Cincinnati people?
A. That's correct.

Q. Now, Mr. Grismer was to get 900,000 shares for his claims, and was that to be retained by Mr. Grismer?
A. No.

Q. What was the arrangement?

A. I've forgotten whether there were four or five associates there of Mr. Grismer, I think there were four——

Q. George Grismer, Joseph Grismer, Eugene Gadau, and William Walker.

A. All right; Joe Grismer was to be issued 500,000 shares, 300,000 shares of which was to go to the three other parties, Grismer, Gadau, and whatever the other gentleman's name is. He was to retain 200,000. The balance was Allen's and my stock.

Q. That would be 400,000 shares?

A. Approximately; whatever it would figure out, yes.

Q. Now, why weren't those facts as to the issuance of the stock disclosed in this prospectus? Did you see this prospectus?

A. I didn't pay much attention to it. I knew what was going [639] into it, however.

Q. Why was that condition as to the issuance of the stock not disclosed in this prospectus?

A. Well, we didn't figure that it would be as good a sales transaction, is one reason that actuated us in setting it up the way we did.

(Testimony of Francis Clayton Keane.)

Q. And was there any other reason?

A. I think at the time that that Pilot stock went out that Mr. Allen was released from that injunction.

Q. No, there was some evidence this morning that the injunction would run until June, 1946.

A. What time did we make the public offering of that?

Q. There was some evidence this morning that it was made May 2, 1946.

A. All right, then the same thing would apply to the Pilot.

Q. What do you mean by that?

A. That Mr. Allen was under an injunction, and we didn't want his interest in it to show.

Q. Now, with regard to the issuance of 150,000 shares of Pilot stock to James Gyde for legal services, what was the arrangement in regard to that stock?

A. Mr. Gyde was to receive 25,000 shares of it. The balance of it was to be returned to Allen and I.

Q. And who made that arrangement?

A. Allen and myself both discussed it with Mr. Gyde. [640]

Q. And in connection with the arrangement for the issuance of the Elmer Johnston Extension stock, why was that issued so that he only got 75,000 shares to retain out of his 200,000 share certificate?

A. Well, that deal was made between Mr. Allen

(Testimony of Francis Clayton Keane.)

and Mr. Johnston. The only thing that I knew about it is what Mr. Allen told me.

Q. What was that?

A. He told me that we were getting that cut-back of that stock.

Q. And that was to be Allen's and Keane's stock? A. That's right.

Q. Did he tell you why the arrangement was made to issue it in Johnston's name first?

A. So that we'd have a good record on getting it out, being able to dispose of it.

Q. In connection with the transaction with Mr. Gyde are these the two checks, and I'm referring now to Exhibits 31 and 31-a, which were the proceeds from the sale of most of the Gyde stock?

A. I think that's correct.

Q. One of them bears your endorsement, does it not?

A. That's correct. That is signed by Mrs. Vermillion, however.

Q. That is her signature?

A. That is her signature. [641]

Q. But authorized by you?

A. Yes. It's actually my signature, but it was signed by her.

Q. Yes, and you're referring to Exhibit 31-a, the May 23, 1946, check. Now, with regard to the Plaintiff's Exhibit 13, a \$40,000 check to the Pilot Company from E. J. Gibson and Company, what have

(Testimony of Francis Clayton Keane.)

you to say as to where you first obtained that check? A. Mr. Allen handed it to me.

Q. And where was that?

A. In the Metals Bar at Wallace. I think at the same time I might add that he handed me this \$10,000 check, which is marked——

Q. Plaintiff's 31.

A. ——Plaintiff's 31, yes.

Q. That's the James Gyde check?

A. These two checks were handed to me at the same time.

Q. And what did you do with those checks, and I'm now referring you to Plaintiff's proposed exhibits 36, 37, and 38, which were identified as deposit slips of the Idaho First National Bank for F. C. Keane, Pilot Silver, and Coeur d'Alene Consolidated respectively? I'm talking about now the \$10,000 check and the \$40,000 check.

A. They were placed in the bank at Wallace.

Q. That's the Idaho First National Bank?

A. The Idaho First National Bank. [642]

Q. And before you deposited them there in the bank did you have any conversation with Mr. Allen regarding that deposit? A. Yes.

Q. What was that conversation?

A. Well, he walked in, as I recall it, it was late in the afternoon, four o'clock or after, and he and Mr. Horning had been in Spokane negotiating some of the transactions incident to the Coeur d'Alene Consolidated. He walked in, and he made

(Testimony of Francis Clayton Keane.)

the statement, showed me the two checks, or handed them to me, and he says "How's that for bringing in the money, bucko" or something to that effect.

Q. "How's that for bringing in the money, bucko"?

A. Yes.

Q. You recall that?

A. Yes. Now, after that, shortly, I imagine we all had a drink, which was quite customary on my part at least at that time, and then he and I went back in the corner for a minute.

Q. A lot of your business was transacted there at the Metals Bar?

A. At least discussed there, I would say. Now, after he turned these over to me he went back and told me he wanted a check for \$25,000 for the Coeur d'Alene Mines, or he wanted \$25,000 for the Coeur d'Alene Mines out of it, and [643] I inquired at that time from him why he didn't bring up some of the money that he had from the sale of the stock.

Q. What stock would that have been?

A. That was Pilot, and Friday Extension.

Q. Some of the promotion stock?

A. Some of the stock that had been sold, yes.

Q. Of course, the Pilot issue was just beginning at that time.

A. All right, then it was Extension money, would be right, and he said he didn't have time, that they just busted by Gibson's and picked up these two checks and hurried up there. I said all right: I went down and I originally, on this Exhibit 38, I

(Testimony of Francis Clayton Keane.)

originally deposited that to the credit of the Coeur d'Alene Consolidated——

Q. Coeur d'Alene Consolidated?

A. ——taking \$25,000 out of this item for \$40,000 and the item for \$10,000. Thereafter I took a duplicate of this deposit slip up to the Metals Club where Mr. Allen was, and he told me he wanted a cashier's check. He was a little aggravated and said "If you don't want to go do it, I'll do it myself." Well, I said "I'll go down and get a cashier's check" which I did, for \$25,000, payable to the Coeur d'Alene Mines.

Q. Is this——

A. That's the exhibit right here in front of me; what is the number of it? [644]

Q. It's part of Exhibit 39, together with a contract between the Coeur d'Alene Consolidated and the Coeur d'Alene Mines.

The Court: Is that an exhibit or identification?

Q. For identification.

A. I probably mis-spoke myself, your Honor.

Q. And did you at that time see this contract that they were entering into? A. No.

Q. You had an interest in the Coeur d'Alene Consolidated?

A. Allen and I and Frank McKinley were supposed to be partners in it, equal.

The Court: Who is the third one?

A. Frank McKinley. He's a metallurgist for the Bunker Hill, at Kellogg.

(Testimony of Francis Clayton Keane.)

Q. What was finally done then with regard to the disposition of this \$50,000, besides the \$25,000 cashier's check?

A. Well, \$20,000 of it was deposited to the credit of the Pilot Silver Lead Company, and \$5,000 of it went out to me, and I guess I wrote a check for the difference there, or \$5,000, to make up this \$25,000 item.

Q. No, I think it comes out even; \$20,000 to Pilot, \$5,000 to F. C. Keane, and \$25,000 to Coeur d'Alene Consolidated makes \$50,000——

A. All right.

Q. ——which was the amount of these two checks. A. That's right.

Q. And you state that that transaction whereby \$20,000 of the Pilot money was used to purchase this \$25,000 cashier's check for Coeur d'Alene Mines Corporation on behalf of the Coeur d'Alene Consolidated Mining Company was done with the knowledge and consent of Mr. Allen?

A. And under the direction, I would say.

Q. These two checks, exhibits 32 and 33 for identification, are the——

A. ——two checks that were given in payment of the Phelan and the Cincinnati groups of mining claims, along with the stock.

Q. And these two checks attached together as one exhibit for identification, 30, the checks to James Gyde, one for \$1,000, one for \$1500.00, are those your checks? A. They are.

(Testimony of Francis Clayton Keane.)

Q. And was that to pay Mr. Gyde?

A. Yes. Now, Mr. Gyde and I entered into an agreement that we would advance him—we had purchased 10,000 shares at ten cents, that's represented by this thousand dollar check.

Q. Now, that's out of the 25,000 shares that he was to keep for himself?

A. Out of the 25,000. A few days later I gave him an additional \$1500.00, which represented the balance of the interest he had in that stock, with the understanding that [646] within a specified period if the price went up we would pay him accordingly for it.

Q. But the net result is that——

A. Mr. Gyde got \$2500.00 out of the transaction.

Q. And you and——

A. ——Allen became the owners of his stock.

Q. And disposed of it?

A. I imagine it's been disposed of.

Q. Well, you saw the checks here from the Gibson Company?

A. Well, I couldn't trace whether they're payment of any particular stock.

Q. I see, as to certificate numbers?

A. No, I wouldn't be able to trace it at all.

Q. But you knew these two checks were for the sale of the Gyde stock? A. That's right.

Q. They're made payable to Gyde.

Mr. Stocking: Some of these exhibits have not yet been received in evidence. I will offer Exhibits

(Testimony of Francis Clayton Keane.)

33, 36, 37 and 38, Exhibits 30 and 39.

Mr. Etter: I'll object to the admission of each and every one of these exhibits on the ground that they're incompetent, irrelevant and immaterial, no proper foundation has been laid yet from the testimony of any witness or this witness within the counts of the indictment as [647] alleged as against the defendant Allen.

The Court: Let me see the exhibits. The objection is overruled.

Mr. Etter: Exception.

The Court: Exhibit 36 is admitted, Exhibit 37 is admitted, Exhibit 38 is admitted, Exhibit 33 is admitted, Exhibit 30 is admitted, and Exhibit 39 is admitted.

Mr. Etter: Exception as to each, please.

(Whereupon, Plaintiff's Exhibits No. 30, 33, 36, 37, 38 and 39 for identification were admitted in evidence.)

Q. (By Mr. Stocking): Mr. Keane, I will show you Plaintiff's proposed Exhibit 4, and ask you if you can identify that exhibit. Have you examined that exhibit?

A. I'm just completing it now. They're duplicate deposit slips from the 23rd day of July, 1945, to January 3, 1947, of deposits to the credit of the Lucky Friday Extension.

Q. And where were the records of the Lucky Friday Extension kept, and under whose control?

A. Mine, my office.

(Testimony of Francis Clayton Keane.)

Q. In your office? A. Yes.

Q. And actually they were being kept by whom in that office? A. By Mrs. Vermillion.

Q. Under your direction? [648]

A. That's right, or under my direction and Mr. Allen's direction also.

Q. And did you also keep the stock certificate books? A. We had them there.

Q. Will you mark these, please?

(Whereupon, stock certificate book stubs of Extension were marked Plaintiff's Exhibits No. 90, 91 and 92 for identification.)

Q. I'll show you some that have not yet been identified, marked 91, 92 and 90; can you identify these as stock certificate books of the Extension Company, stub books? A. They're the stubs.

Q. Now I'll show you the Plaintiff's Exhibit 5 for identification, and ask you if you can identify that as a record, and in that connection also, Plaintiff's Exhibit 6.

The Court: Is that admitted?

Q. No, for identification; I'm sorry.

A. This is the check stub, I'm referring to Exhibit 5, is the check stub of the Friday Extension for the period dated July 28, '45, to January 31 of '47.

Q. And that was kept by whom?

A. It was kept in my office under our joint control, and most of the checks were drawn by Mrs. Vermillion.

(Testimony of Francis Clayton Keane.)

Q. And can you identify Plaintiff's Exhibit 6 for identification? [649]

A. The exhibit marked for identification is a bunch of checks running from July 23, 1945, to March 13, 1947, drawn on the Lucky Friday Extension Mining Company account in the Idaho First National Bank. The checks were signed by either Irene Vermillion or by myself.

Q. Now, Plaintiff's Exhibit 7 for identification.

A. Extension bank statements from July 23 of '45 to March 13 of '47.

Q. And where were these records kept?

A. After they were returned to the Extension Company they were in my office until such time as I delivered them to Mr. Denney.

Q. Now, all of these Extension records that you have identified were delivered to Mr. Denney of the Securities and Exchange Commission?

A. That's correct.

Mr. Stocking: I will not offer the stock stubs, but I'd like to offer at this time Plaintiff's 4, 5, 6 and 7 for identification.

Mr. Etter: I'll object to the exhibits all on the same ground, that a proper foundation has not been laid, they're incompetent, irrelevant and immaterial to show any proof of the allegations of the counts of the indictment as against the defendant Allen, there's no showing that he was privy to any of the records there indicated, or had [650] access thereto.

(Testimony of Francis Clayton Keane.)

The Court: Let me see them. What is this slip in Exhibit 5? Is it of any significance?

Mr. Stocking: Not that I know of, your Honor. No, that has no significance; I didn't know it was on there.

The Court: The objections are overruled; Exhibits 4, 5, 6 and 7 are admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 4, 5, 6 and 7 for identification were admitted in evidence.)

The Court: Just a moment; it's time for recess. The jury is at recess for ten minutes. The court is at recess.

(Short recess.)

(All parties present as before, and the trial was resumed.)

* * *

Mr. Stocking: The clerk has called my attention to the fact that in Exhibit 5, which was just admitted in evidence, there is also a page marked Exhibit 5-a, which was the page on which Irene Vermillion had made the notation [651] "To J.A.A." and I ask that that be admitted also, as a part of Exhibit 5.

The Court: Exhibit 5-a is offered. Counsel had better see it.

Mr. Stocking: It's part of Exhibit 5. They re-

(Testimony of Francis Clayton Keane.)

late to these two checks, exhibits 8 and 9, which have already been admitted in evidence.

The Court: What is it you're saying now?

Mr. Stocking: I say, the stub page there which is marked 5-a relates to these two checks, exhibits 8 and 9, which have already been admitted in evidence.

The Clerk: Let me correct you; it's checks 8 and 9, but exhibits 6a and 6-b.

Mr. Stocking: Oh, thank you; checks 8 and 9 of the Extension.

Mr. Etter: Your Honor, at this time we're going to object to the admission of this exhibit on the ground that it's incompetent, irrelevant and immaterial to prove any issue as laid in any count of the indictment as relating to the defendant Allen, the further ground that no proper foundation has yet been laid, including all of the testimony and the testimony of this witness; the indication of the exhibit and the testimony does not show the defendant Allen privy with anything sought to be proved here; likewise it appears from the exhibit that the pencilled notation [652] as to number 8 as it appears on the exhibit there, \$10,000, on number 9 it is \$5,000, and that the handwriting is obviously apparently different as to both the \$10,000 and the initials J.A.A., yet the testimony has been to the effect that both were executed simultaneously.

Mr. Stocking: I don't believe that's the testimony.

(Testimony of Francis Clayton Keane.)

Mr. Etter: Or within a reasonable time after the occurrence of the event, whatever it was; I'm not trying to remember the record; and that the same so far as the defendant Allen is concerned is mere hearsay and inadmissible to prove any point.

Mr. Stocking: Mrs. Vermillion testified to that as the notations made in the regular course of business when she gave those two checks, signed but in blank, to Mr. Allen on August 7, 1945.

The Court: Objection overruled.

Mr. Etter: Exception.

The Court: Exhibit 5-a admitted.

(Whereupon, Plaintiff's Exhibit No. 5-a for identification was admitted in evidence.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Now, have you had an opportunity to look over Plaintiff's Exhibit 9? A. Yes.

Q. And what is that exhibit? [653]

A. That's the deposit slips of the Montana Leasing Company.

The Court: Is that an identification?

Mr. Stocking: Yes, Exhibit 9 for identification.

* * *

A. This is Plaintiff's Exhibit 9, marked for identification. It's copies of deposit slips in the First National—I can't get the name of this bank; as

(Testimony of Francis Clayton Keane.)

I remember it, it's the First National, Great Falls, Montana, and to the Idaho First National.

Q. Do they cover all of the deposit slips of the Montana Leasing Company from what dates?

A. From August 19, '43, to December 23 of '46.

Q. And this record was retained——

A. In my office.

Q. And turned over to Mr. Denney?

A. That's correct.

Q. By you? [654]

A. Correct.

Q. And of these deposit slips whose handwriting appears beginning with the deposit slip, or I am referring especially to the deposit slips beginning June 4, 1945, of those deposit slips which are in handwriting?

A. This one is Irene Vermillion. So is this one. That would be——

Q. That's marked Exhibit 9-a beginning with that slip? A. Yes.

Q. I just wanted you to identify it generally.

A. Generally it's Irene Vermillion's writing.

Mr. Stocking: We'll offer in evidence Plaintiff's 9, being the Montana Leasing Company deposit slips identified by this witness.

The Court: Are you offering all of them, beginning 1943?

Mr. Stocking: I'm going to offer just the portion beginning marked 9-a, that's June 4, 1945, on.

The Court: You're offering now 9-a, and not 9?

(Testimony of Francis Clayton Keane.)

Mr. Stocking: Yes, I'm corrected.

Mr. Etter: The defendant at this time will object to the admission of this exhibit on the ground that it's incompetent, irrelevant and immaterial, a proper foundation has not been laid, there's nothing in the exhibit that goes to prove any count or charge as alleged and laid in [655] the indictment against the defendant Allen.

The Court: Exhibit 9-a, as I understand it, was all of the slips of what was previously Exhibit 9 which begin with the slip marked June 4, 1945.

Mr. Stocking: Yes, from that date on.

The Court: The Lexington Silver Mine deposit slips and the Montana Leasing Company deposit slips are combined in the same exhibit?

Q. (By Mr. Stocking): What was the circumstances with respect to the Lexington Silver Mines?

A. They are one and the same, and are combined.

Q. Yes; it was the successor company to Montana Leasing?

A. To the partnership of Montana Leasing.

The Court: There seem to be combined in this exhibit some sheets that have not yet been explained. They don't on the face of them appear to be deposit slips. I call your attention to five. Without explanation of these five the exhibit will be rejected. I will reject it now, for the purpose of the record. Exhibit 9-a rejected, defendant's objection sustained.

(Testimony of Francis Clayton Keane.)

Q. Those slips, Mr. Keane, can you identify those five items in Exhibit 9-a to which the Court has just referred?

A. They're settlements on ore shipped by the Callahan Consolidated to the Bunker Hill Smelter or the Sullivan Zinc Plant, out of which shipments the Delaware Mines Company [656] had a royalty.

Q. Was that royalty then deposited to the credit of the Montana Leasing Company? A. Yes.

Q. Well, does that deposit show in any of these deposit slips? Can you identify the deposit slips?

A. Wait a minute until I get some dates, and I'll tell you.

Q. They support the items on certain deposit slips, is that it, Mr. Keane?

A. Yes, I think that is correct.

Mr. Stocking: I'd like to renew my offer of this exhibit, but have these particular items which are stapled in there eliminated; they're not necessary for our consideration.

The Court: All right, you've made a renewed offer of 9-a less certain slips.

Mr. Stocking: I'll have the clerk extract them.

The Court: Just a moment; you needn't extract them yet. Counsel may object to them being extracted.

Mr. Stocking: I'm making the offer without offering those.

Mr. Etter: The defendant will stipulate, your Honor, that it isn't necessary to detach these par-

(Testimony of Francis Clayton Keane.)

ticular sheets which your Honor has singled out, but they may be clipped together, and the offer may be renewed in that [657] form, if that meets the approval of the court.

The Court: All right, Exhibit 9-a is re-offered.

Mr. Etter: The same objection is made to it, even with the clipping on it.

The Court: Objection is overruled.

Mr. Etter: Exception.

The Court: 9-a is admitted.

(Whereupon, a portion of Plaintiff's Exhibit 9 for identification was admitted in evidence as Plaintiff's Exhibit No. 9-a.)

Q. (By Mr. Stocking): Have you had an opportunity to examine Exhibit 17 for identification?

A. Yes.

Q. What is it?

A. It's the bank sheet of the Pilot Silver Lead from May 22, 1946, until February——

The Court: Of the Pilot?

A. Of the Pilot Silver Lead, from May 22, 1946, until the 26th day of February, 1947.

Q. And can you identify Plaintiff's 14 for identification?

A. Deposit slips, Pilot Silver Lead, in the Idaho First National Bank from May 22, 1946, until February 26, 1947.

Q. And you're referring now to Plaintiff's Exhibit 14——

A. That's right.

(Testimony of Francis Clayton Keane.)

Q. ———for identification? [658] A. Yes.

Q. Now refer to Plaintiff's 16; have you looked that over?

A. That's the check stubs, Pilot Silver Lead, from June 3, 1946, to February 18, 1947.

Q. And now refer to Plaintiff's Exhibit 15; you have had an opportunity to look that over, have you?

A. Yes. Those are cancelled checks of the Pilot Silver Lead from May 31, 1946, until February 18 of 1947, and they include some bank charges.

Q. And these records of the Pilot Company were kept where? A. In my office.

Q. And did you turn these records over to Mr. Denney? A. Correct.

Mr. Stocking: We'll offer Plaintiff's 16, 17, 15 and 14 for identification, records of the Pilot.

Mr. Etter: The defendant, your Honor, will object to each and every one of these exhibits which have been offered on the ground that they're incompetent, irrelevant and immaterial, don't go to prove any issues made out in any count of the indictment as against the defendant Allen, no proper foundation has been laid at this time.

The Court: Exhibits 14, 15, 16 and 17 are admitted.

Mr. Etter: Exception.

The Court: The objection is overruled.

(Whereupon, Plaintiff's Exhibits No. 14, 15, 16 and 17 for identification [659] were admitted in evidence.)

(Testimony of Francis Clayton Keane.)

Q. (By Mr. Stocking): Mr. Keane, I'll show you Plaintiff's Exhibits 21, 52, 20, 51 and 19, the latter being for identification. These exhibits have been identified as letters prepared and mailed with the stock certificates of the Lucky Friday Extension Mining Company and Pilot Silver Lead Mines, Inc., to the Spokane brokers who participated in these underwritings. Can you state under whose direction they were mailed? A. Under mine.

Q. And these were prepared where?

A. In my office.

Mr. Stocking: All of these have been received in evidence, if the Court please, except Plaintiff's Exhibit 19, and the Court yesterday had some question about two of the letters in Exhibit 19, being the letters dated May 29, 1946, which Irene Vermillion had identified, that all of these letters had been mailed, and they were identified yesterday as having been received.

The Court: I've not checked my notes yet. Exhibit 19 is renewed. I assume you're still objecting?

Mr. Etter: Yes, we're still objecting, your Honor.

The Court: Ruling reserved.

Q. (By Mr. Stocking): Mr. Keane, I'll show you what has been admitted in evidence as Exhibits 6-a and 6-b, being checks [660] to the Delaware Mines Corporation dated August 7, 1945, \$10,000, and 6-b being the Montana Leasing Company, \$5,000, August 28, 1945, both being checks written

(Testimony of Francis Clayton Keane.)

by Lucky Friday Extension Mining Company, and ask you if you authorized the issuance of those two checks?

A. No, outside of the general authorization. I didn't specifically authorize the drafting of either of these checks.

Q. Did you know anything about the drafting of those checks?

A. Not until they were shown to me in the grand jury room.

Q. And what is the Delaware Mines Corporation?

A. The Delaware Mines Corporation is a corporation that formerly owned the land, or the mining ground, that was conveyed to the Callahan Consolidated, and I think that the Days at the present time have a substantial interest in it.

Q. Well, I mean who is in the Delaware Mines Corporation, or who was in it at that time?

A. Mr. Allen, Grismer, Mullen, myself, and I've forgotten who the fifth director was; I think that there were five directors.

Q. Was that an active corporation in August 7, 1945?

A. Only to the extent that it probably was receiving some royalty payments from the Callahan Company.

Q. And what persons were in a position of control of that [661] company?

A. Mr. Allen and myself.

(Testimony of Francis Clayton Keane.)

Q. Do you know of any particular obligation of the Lucky Friday Extension Mining Company to Delaware Mines Corporation for which Exhibit 6-a, the \$10,000 check, could have been paid on August 7, 1945? A. None except—

The Court: This is the Extension?

Q. This is the Extension check to Delaware Mines Corporation, \$10,000.

A. There was no direct obligation from the Extension Company to the Delaware Company. There was, however, an obligation which the Montana Leasing Company owed to the Callahan Consolidated in existence at that time, for money that was borrowed some time previous thereto.

Q. And when the money had been borrowed from the Callahan, what company borrowed the money?

A. The Montana Leasing Company, the partnership of Allen and myself.

Q. To refresh your recollection, I'll show you Plaintiff's Exhibit 45.

The Court: Is that admitted?

Q. No, that's right, Exhibit 45 for identification.

A. That is a check given by the Callahan Company to the Delaware Mines Corporation for \$6,000 under date of June [662] 16, 1945.

Q. Also to refresh your recollection I'll refer to Plaintiff's Exhibit 9-a, a deposit slip of June 16, 1945, into Montana Leasing Company, and then I will ask you who borrowed the money from the Callahan Consolidated Company?

(Testimony of Francis Clayton Keane.)

A. Mr. Allen borrowed it from Mr. Callahan and brought the check down to our office and I think he gave it, as I recall it, he turned it over to me; I in turn turned it over to Mrs. Vermillion with instructions to her to deposit it to the Montana Leasing Company.

Q. But the loan was made to what company?

A. To the Delaware Company.

Q. Yes. Now, with respect to Plaintiff's exhibits 41, 41-a and 41-b for identification, can you identify those three checks?

A. They're checks drawn by the Delaware Mines Company payable to the order of Montana Leasing Company.

Q. That's 41-b?

A. 41-b for \$3,000, \$6,000 to the Callahan Consolidated Mines, Inc., which is Plaintiff's 41-a marked for identification, and a check for \$1,000 to Walter H. Hanson by the Delaware Mines Corporation, all of them being dated August 7, 1945.

Q. Now, whose names appear on those checks?

A. Mr. Allen's and my own. [663]

Q. And what was the practice with respect to signing Delaware checks?

A. Mr. Allen had some of them signed up, and I had some of them signed up; that is, I would sign the checks that two of us had to sign, and on the checks that were turned over to him I would sign and turn them over to him, and he would sign the ones that were left in my office.

(Testimony of Francis Clayton Keane.)

Q. Now, did you have anything to do with the issuing of these three checks, 41, 41-a and 41-b, on August 7, 1945?

A. I had signed them previous to August 7, 1945.

Q. In blank? A. In blank.

Q. And was there an obligation at that time—did this obligation of Delaware Mines Corporation to Callahan Consolidated, Inc., of \$6,000, exist up to that date of August 7, 1945?

A. That is my understanding, that's the repayment of the loan which was made under date of June 16 to the Delaware.

Q. And were you present when that loan was made by Mr. Allen? A. I was not.

Q. Where were you?

A. I was in my own office, which is down the hall a ways from the Callahan office.

Q. Do you recall having any conversation with Mr. Allen about that loan? [664]

A. I recall—no, I don't know whether it was that particular loan or another one. We did have a conversation one time when we got I think it was \$6,000 from Callahan, and he went in and asked him for it, and Les Randall was present, Mr. Randall is an accountant in Wallace, and Jim says "I've got to have some money"—

Q. This is what Mr. Allen told you?

A. Told me that had occurred. He said "I've got to have some money" and Donald says "How much?"—

(Testimony of Francis Clayton Keane.)

Q. Donald?

A. Callahan. Allen says \$6,000. Callahan says "When do you have to have it, next week?" Jim says "No, we want it now" and Callahan says "Well, you mean tomorrow, or the next day?" and Jim says "No, I mean now", and thereupon Callahan complained that he was given no notice, but he wrote the check just the same.

Q. Well, was it customary for the Delaware Mines to obtain loans from time to time from the Callahan?

A. We had loaned money back and forth on various occasions.

Q. And who dealt on behalf of the Delaware with Donald Callahan? A. Mr. Allen.

Q. Showing you the Plaintiff's identification 34 and 35, being deposit slips of the—original deposit slips, 34, of the Delaware Mines Corporation, 35 identified as [665] original deposit slip of Montana Leasing Company, both for August 7, 1945, reflecting the deposits of these Delaware checks—no, reflecting, 34 reflecting the deposit of Exhibit 6-a, and 35 reflecting the deposit of the \$3,000 Delaware check to Montana Leasing on August 7, 1945, did you have anything to do with the preparation of those deposit slips? A. No.

Q. And if, as the evidence shows, they were prepared by Beatrice McLean French on August 7, 1945, did you give her any directions about the preparation of those?

(Testimony of Francis Clayton Keane.)

A. I wasn't in town during business hours on the 7th of August.

Q. Of 1945? A. Of 1945.

Q. Have you made a check to determine where you were on that day? A. Yes.

Q. And where were you on August 7, 1945?

A. I was over on Bird Creek, about twelve miles up the north fork—I mean up the St. Joe River from the town of Avery.

Q. How did you fix that particular date?

A. There was a notation in the office wherein I had given Mrs. Vermillion instructions to call me on Wednesday or [666] Thursday so that I would have an excuse to come home. I found that notation in her notes.

Q. And that refreshed your recollection?

A. That refreshed—then I checked back on a meeting of the Hecla Mining Company, the board of directors; Mr. Hobin was the host at this, and he was entertaining one of the directors, Mr. Meyers, Henry Meyers, who is now deceased, from Milwaukee.

Q. When was this fishing trip with relation to the date of the Hecla Board meeting?

A. Well, the board meeting was held on a Monday. On Monday afternoon Hobin called me——

Q. What date was that Monday?

A. That would be the 6th.

Q. August 6, 1945.

(Testimony of Francis Clayton Keane.)

A. And he and Meyers went on over on the evening of the 6th. Murfelt, Horning, Sekulic and myself went over on the morning of the 7th.

Q. Did you all go together, or separately?

A. No, I think that Horning went in Murfelt's car, and Sekulic went in mine.

Q. And did you stay out there?

A. We stayed out there until Saturday.

Q. That's your recollection?

A. That's my recollection. [667]

Q. Was there some other way in which to fix that particular week you were out there?

A. Yes, there was. Fred May, who was a deputy sheriff at Avery, drove up to where we were camped on, if I recall correctly, it would be a Friday night, and advised us as to the damage that was done by the atom bomb which was dropped on the first of the Japanese cities, and also stated that Russia had entered the war against Japan, and also stated that there was strong talk of peace of the Japanese war at that time.

Q. And those incidents, and by your checking back to the dates of those incidents, helped you refresh your recollection as to the specific date?

A. They definitely refreshed it.

Q. Can you identify Plaintiff's Exhibits 8-c-1 and 8-c-2 for identification?

A. They're checks signed by J. A. Allen drawn on the account of the Montana Leasing Company.

Q. And what is the date of each of those?

(Testimony of Francis Clayton Keane.)

A. Those checks are dated August 7, 1945.

Mr. Stocking: We'll offer in evidence at this time Plaintiff's Exhibits 8-c-1 and 8-c-2.

Mr. Etter: We'll object to the introduction of these exhibits, your Honor, on the ground that they are incompetent, irrelevant and immaterial, they don't go to [668] prove any issue in this case whatsoever, and for the further reason that no proper foundation that I can see has been laid for the admission of the same, and on the ground that the same serve no useful purpose other than an accumulation of documents which serve only to tend to confuse the jury and to avoid the issues made, as a matter of fact, in each count in the indictment against the defendant Allen.

The Court: Are those checks dated August 7, 1945?

Mr. Etter: Yes.

The Court: Signed by Mr. Allen?

Mr. Etter: Yes.

The Court: On Montana Leasing?

Mr. Etter: Yes, sir.

The Court: Admitted; objection overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 8-c-1 and 8-c-2 for identification were admitted in evidence.)

Mr. Stocking: I'll also offer in evidence the Plaintiff's Exhibits 41, 41-a and 41-b, being the

(Testimony of Francis Clayton Keane.)

three Delaware checks of August 7, 1945; 34 and 35, being the deposit slips, one covering Montana Leasing, the other Delaware, on August 7, 1945, and Plaintiff's 45, the Callahan Consolidated loan to the Delaware. [669]

Mr. Etter: I'm going to object to these exhibits on the ground that they're incompetent, irrelevant and immaterial to prove any issue in this case as laid in the indictment against the defendant Allen; on the further ground that no proper foundation has been laid, and the introduction of these exhibits would serve no purpose other than confusion and speculation as to the intent and meaning of the exhibits; there have been no connections with the counts of the indictment against the defendant Allen; they're incompetent, irrelevant and immaterial to prove any issue in the case.

Mr. Stocking: The tracing of the funds.

Mr. Etter: What funds?

Mr. Stocking: The dates are significant.

The Court: What's that?

Mr. Stocking: I say, the tracing of the funds, the dates are significant.

The Court: Objections are overruled. Exhibits 34, 35, 41-b, 41-a, 41, and 45 admitted.

Mr. Etter: Note an exception.

(Whereupon, Plaintiff's Exhibits No. 34, 35, 41, 41-a, 41-b, and 45 for identification were admitted in evidence.)

(Testimony of Francis Clayton Keane.)

Mr. Stocking: I'd like to refer to these two particular checks admitted as 8-c-1 and 8-c-2, make a [670] brief reference to the jury.

The Court: You may.

Mr. Stocking: These checks are dated August 7, 1945, signed by James A. Allen, drawn on Montana Leasing Company, one to Kent and Rusch, the sum of \$59.95, bearing the typewritten notation at the lower corner of the check "James A. Allen insurance". The second check, August 7, 1945, Inland Empire Racing Association, \$200.00, James A. Allen.

The Court: Let me see those. It's my recollection that there was no objection as to these two checks. Am I right in this?

Mr. Etter: No. There was an objection.

The Court: When were these admitted?

Mr. Stocking: Just a moment ago, your Honor. On the date of August 7 they were signed by Mr. Allen.

The Court: Oh, yes, these are the two signed by Mr. Allen.

Mr. Stocking: Yes.

The Court: All right, the admission of those two is re-affirmed.

Q. (By Mr. Stocking): Mr. Keane, did you have anything to do with the direction as to the writing of those two checks, 8-c-1 and 8-c-2?

A. They were not prepared in my office. [671]

Q. And not prepared under your direction?

A. No.

(Testimony of Francis Clayton Keane.)

Q. Can you identify Plaintiff's Exhibit 40?

A. No, I don't believe I can.

Q. This is an original record of the bank?

A. Yes.

Q. It has been identified as a Delaware Mines Corporation deposit statement. Who had authority to sign checks on the Delaware account during the month of August, 1945?

A. Allen, and I've forgotten the date of Mullen's death.

Q. Didn't he die early in 1945?

A. I can't recall the date. If he did, then it was Jim Allen and myself.

Q. Whose names appear on the checks that were issued that date.

A. Yes. It's possible that young Bill Mullen, in the event the elder had died, had authority. I've forgotten.

Mr. Stocking: We'll offer Exhibit 40. It was identified by Mr. Kraemer. It shows the condition of the Delaware bank account on the date that these checks the Extension gave went into it.

Mr. Etter: I'm going to object to the admission of this exhibit on the ground it's incompetent, irrelevant and immaterial; plainly on its face indicates, if the Court please, a series of transactions extending from [672] June 22, 1944, until December, 1945; it does not go to serve or to prove any count or allegation as laid in the indictment against

(Testimony of Francis Clayton Keane.)

the defendant Allen, and is in no way relevant to this case, and that's all.

The Court: All right. When was the Extension organized?

Mr. Stocking: What was that, your Honor?

The Court: Yes.

Mr. Stocking: What did you say? I didn't hear you.

The Court: What date was the Extension organized?

Mr. Stocking: The Extension was organized in May, 1945.

The Court: Well, unless there's some explanation, I can see no admissibility of that portion of this exhibit before May 8, 1945.

Mr. Stocking: Well, we really didn't intend to make any reference to that portion of the exhibit, except——

The Court: Well, it can be covered, that portion of it, if you wish to re-offer it with the entries prior to May 8, 1945, covered.

Mr. Stocking: Yes, I'll make that limitation on my offer.

The Court: It will be understood that when it goes to the jury, that such portion is to be covered. [673]

Mr. Stocking: Yes. •

The Clerk: Was that May 8, or 28th?

Mr. Stocking: The prospectus says June, I think the date was May, but make it on June 1, 1945.

(Testimony of Francis Clayton Keane.)

The Court: All right, Exhibit 40 is re-offered with respect to the entries dated on or after June 1, 1945. Objection overruled.

Mr. Etter: An exception.

The Court: Exhibit 40, entries since June 1, 1945, admitted.

(Whereupon, Plaintiff's Exhibit No. 40 for identification was admitted in evidence.)

Q. (By Mr. Stocking): Now, with reference to the Pilot, the exhibits show that checks were issued, two checks were issued to War Eagle Mining Company on June 28, 1946, and July 31, 1946, for a total of \$1200.00. Who was the War Eagle Mining Company? Do you know that company?

A. It was originally agreed that it was Ben Porter, who lives in Seattle, Mr. Allen, and myself; we each owning a third in it, having some ground down out of Salmon, Idaho.

Q. What do you know about the transfer of funds from Pilot to War Eagle Mining Company?

A. Sometime the winter before we had, that is, Porter, Allen and myself had a conversation in which he stated that he would need about \$10,000 during the summer to do some [674] work down at Salmon, or at this property. At that time, as I recall, we said that we probably would be able to help out on it. The next knowledge I had of it was the checks coming in and the bank calling me on them, and the first one or two of them I think I told them to pay. Now, I don't know what was done

(Testimony of Francis Clayton Keane.)

after that. There was a total of somewhere around \$8,000 advanced to the War Eagle.

Q. Was most of that advanced out of Montana Leasing Company account?

A. Well, there was so many transfers back and forth it would be impossible for me to say where it came from.

Q. Well, did you discuss these advances from these accounts with Mr. Allen?

A. Only on the one occasion that I mentioned, and I think that conversation occurred here in Spokane.

Q. Did you later ever have any conversation with Mr. Allen about the covering of checks as they came in on the War Eagle account?

A. Well, I don't believe that I did. It was my understanding that Mrs. Vermillion did have.

Q. Now, what about the advances shown in the records in evidence of \$10,000 to the Independence Lead Mines Company by Pilot on June 25, 1946?

The Court: What company?

Q. Independence Lead Mines Company. [675]

A. That was advanced.

Q. Who was Independence Lead Mines Company at that time?

A. Well, I was in charge of it at that time.

Q. You were what?

A. I was in charge of it, president of it.

Q. And was that an advance discussed with Mr. Allen?

A. Yes.

(Testimony of Francis Clayton Keane.)

The Court: Just a moment; will you read that last question, please?

(Whereupon, the reporter read the last previous question and answer.)

Q. What was the substance of your discussion as to the necessity of your taking this money from Pilot?

A. I told him that—I think it was used for the payment of attorney's fees, and I told him I had to take it.

Q. Did he agree to that? A. He did.

Q. The Pilot also advanced some \$61,300 to the Lexington Silver Lead, which was the successor to Montana Leasing. Were there any different instructions given, or any different reasons for those advances than you have previously testified to about the Extension? A. No.

Q. And those advances that I've just referred to were in addition to the \$20,000 which was deposited for the [676] benefit of Coeur d'Alene Consolidated from Pilot funds?

A. Now, I haven't checked those figures, and I couldn't tell you the exact amount. I know it was substantial.

Q. How long did the Pilot run before they ran out of money, after the money came in from the underwriters?

A. Not very long; maybe three, four months, five months.

Q. The money came in from the underwriters

(Testimony of Francis Clayton Keane.)

the end of May and the first part of June, 1946, did it not?

A. That would be right. It had practically suspended operations in the late fall of '46.

Q. And by September, '46, there was an overdraft?

A. Well, that's within the realm of possibility, yes.

Q. And then it became necessary for some money to be put in Pilot? A. Probably was, yes.

Q. Now, was there ever any action on the part of the stockholders or the directors of these companies authorizing the diversion of these monies to these other companies you've mentioned?

A. No.

Q. There was no corporate action taken at all?

A. No.

Q. There has been some testimony, Mr. Keane, concerning conferences regarding the entering into of a contract between the Extension, the Hunter Creek, and the Big Friday. Do [677] you recall that there were some negotiations?

A. Oh, definitely.

Q. Who participated in those discussions and negotiations on behalf of the Extension?

A. Well, possibly I was supposed to, or probably I was supposed to. At the time, if I recall correctly, I was under the influence of intoxicating liquor, and I think Mr. Allen took full charge of those negotiations and negotiated the contract on

(Testimony of Francis Clayton Keane.)

behalf of the Friday Extension. Horning was acting for the Big Friday, and Johnston and Dunlop, who's the president of the Hunter, or at least is in control and charge of it, negotiated on behalf of the Hunter Creek.

The Court: Johnston and who?

A. ——and Dunlop.

The Court: Dunlop for Hunter, and who for Big Friday?

A. Horning.

Q. Did you know anything about the defendant Allen receiving 100,000 shares of Hunter Creek stock in connection with those negotiations?

A. He advised me about the time of these negotiations that he and I were to receive 100,000 shares of Hunter Creek for assistance rendered by Allen in those negotiations; that in addition to that we were to get another 200,000 shares [678] which was to be split six ways.

Q. That was the Hunter Creek stock?

A. Hunter Creek stock, yes.

Q. This is what Mr. Allen told you?

A. That's right.

Q. Did you ever get any of the stock?

A. Well, Mr. Allen acknowledged at one time in a contract that he would put that up in the hands of some trustees, but to my knowledge it's never been put up.

Q. In other words, you didn't get any of it?

A. I didn't get any of it.

(Testimony of Francis Clayton Keane.)

Q. Now, was there ever any arrangement for the issuance of Extension stock to Mr. Allen in connection with those negotiations?

A. Of Extension stock?

Q. Yes. A. No.

Q. Had the arrangements for the division of the Extension stock been made prior to that?

A. Definitely.

Q. And they were as you have previously testified?

A. That's right.

Q. Now, in your dealings with Mr. Allen, and as you've described it, the so-called partnership arrangement, when did this arrangement end, come to a conclusion, as far as [679] you and Mr. Allen were concerned?

A. There were two occasions at which it might have been called at an end. One was one evening, or one early morning, about 3 o'clock in the morning. He came down to my home and was very noisy and belligerent, and somewhat under the influence of intoxicating liquor. He awakened my—well, my wife was awake, he'd phone me just before that, and he was very noisy, and I finally let him in, because I didn't want to disturb the neighborhood.

Q. About when was this?

A. This was sometime late in November; I couldn't fix the exact date.

Q. What year? A. 1946.

Q. After you had run out of money for the Pilot?

(Testimony of Francis Clayton Keane.)

A. Yes, and he got to telling me in a loud tone of voice the position we were sitting in, and if I might digress there for a moment, my wife had gotten up and come out also, she was present, and his proposition, he finally made the statement that, he says "We're in terrible shape here, and we're going to be jammed up; it will take \$200,000 to clean us up, and I've got the \$200,000, and you haven't". He says "I want you to turn everything over to me, and I'll take care of it", and I said "No, I won't do it". We argued some more, and I ended the conversation by telling him [680] that I thought he was born on the wrong side of the railroad tracks and had never gotten across. Now, that was one of the incidents that might have terminated our relations. The other was when he transferred the bank account, by action of the board of directors of the Lexington Silver Lead in adopting a resolution to the bank stating who could draw checks. I've never seen the resolution. The other incident was when——

Q. That was about when?

A. That was on the 26th day of December that that was done.

Q. Of 1946?

A. Yes, and about the same time, Joe Grismer——

The Court: Of December?

A. Of December, 1946; and then about the same time, at about that date, Grismer, Mullen and Evans

(Testimony of Francis Clayton Keane.)

entered my office after it was closed, and removed the Extension books from the office, or removed some books from the office, a bunch of them, Evans having pointed out to them where the books were. That absolutely severed our last relation.

Q. Now, when you were associated with Mr. Allen in the Montana Leasing Company during the periods of 1945 and 1946, were you both drawing on the Montana Leasing Company account?

A. We were.

The Court: When was this? [681]

Q. During the years 1945 and 1946, when funds were being diverted from Pilot and Extension to Montana Leasing Company. A. We were.

Q. And were you both drawing substantial funds out of that account? A. At times.

Q. And were you spending money rather freely?

A. At times; too freely.

Q. Were you spending money for gambling purposes?

Mr. Etter: Now, just a minute; I'm going to object to this line of examination. If they were spending money, that's all very well, but leading questions on what he was spending it, for the purpose of exciting this jury, and that's the only purpose of this examination——

The Court: Just a moment; the objection to the question as leading is sustained, and the answer is stricken.

Q. For what purposes were you spending this

(Testimony of Francis Clayton Keane.)

money that you described you spent rather freely?

Mr. Etter: I'm going to object to that also; the question of what happens after the conversion, if there is a conversion, we could be here for a year——

The Court: Well, that would be true if all the parties admitted conversion. This witness admits conversion. [682] It may not be necessary, but in order to find out how the money was spent, the jury may be aided by testimony as to what was spent. The objection is overruled.

Mr. Etter: Exception.

A. (The Witness): Will you read the question please, Mr. Reporter?

(Whereupon, the reporter read the last previous question.)

A. Living expenses, drinking, some gambling; sometimes the gambling was excessive.

Q. And that applies both to Keane and to Allen?

A. I would say definitely it applied to both of us.

The Court: Just a moment; that again is leading, and is stricken.

Q. Does that apply to both of you?

Mr. Etter: Well, now, if there's any difference in the way that question——

The Court: There isn't much difference. You may ask who did the spending.

Q. Well, who wrote the checks? Who wrote those typed checks for living expenses?

(Testimony of Francis Clayton Keane.)

A. Both of us.

Q. And for drinking and gambling?

A. Both of us.

Q. And were large amounts spent in the mining operations? [683] A. Yes.

Q. That's the mining operations of the Montana Leasing Company? A. That's correct.

Q. Can you identify the signatures on Exhibit 42, the Delaware Mines Corporation bank signature card?

The Court: Is that identification?

Q. Identification, yes.

A. Those are the signatures of J. A. Allen, myself, that is, F. C. Keane, and William Mullen Sr., who is now deceased.

Q. And I also refer to 43 for identification, it's been identified as the Lexington Silver Mines, Inc., card; can you identify those signatures?

A. The first one is J. A. Allen; the second one is mine, F. C. Keane, and the third one is Irene Vermillion.

Q. I'll show you Plaintiff's Exhibit 44 and ask you if you had anything to do with the direction of the preparation of that deposit slip?

A. No.

Q. On that date? A. No.

Q. Can you identify exhibits 84——

The Court: Are these for identification?

Q. For identification, yes; 84, 86, 85—no, 84, 86 and 88? A. Yes.

(Testimony of Francis Clayton Keane.)

Q. What is exhibit 86? [684]

A. That's a letter received from Mr. Elmer E. Johnston addressed to myself, dated May 8, 1946.

Q. And now with reference to——

A. And received by me through the mails.

Q. Now with reference to Exhibit 84 can you identify that exhibit?

A. That's a letter dated April 5, 1946, written by Elmer E. Johnston and addressed to me at Wallace, Idaho, and received by me through the mails.

Q. Now, does that refresh your recollection regarding the preparation of an annual statement for the Lucky Friday Extension Mining Company.

A. Yes.

Q. What was the situation with regard to the preparation and filing of an annual statement with the State of Washington?

A. We weren't in position to make a statement.

Q. And why weren't you in a position to make a statement? A. Finances, lack of them.

Q. And was Mr. Johnston calling you and writing you to have Mr. Randall make an audit?

A. Yes.

Q. And prepare a statement? A. He was.

Q. And that was the reason the statement was not prepared? A. I think that's probably it.

The Court: What date was this?

A. This was April 5, your Honor please.

Q. Now, in connection with your failure to pre-

(Testimony of Francis Clayton Keane.)

pare that statement, did you have any conversation with the defendant Allen? A. I did.

Q. What was that conversation?

A. We discussed it in Wallace sometime about that time, as to how we'd make up a statement, and as I recall it, he said, "Leave it to me, I'll take care of it with Johnston, have him do it."

Q. And did you then see the financial statement that was filed? A. No.

Q. Were you and Allen out of the state for a period there in March of 1946, do you recall?

A. Yes.

Q. Back where?

A. Well, I was in Bismark and Chicago; Mr. Allen was in Chicago. I was in Bismark for about ten days.

Q. And this demand for a statement began about that time? A. During our absence.

The Court: It's getting awfully close to 4:30.

Mr. Stocking: Yes. I think I'm about through, but I would like the opportunity of being able to check through [686] these exhibits. Just one moment. I did want to offer these, 84, 86 and 88.

Mr. Etter: The objections are renewed on all of these exhibits as heretofore made, on the ground that they're hearsay, letters addressed to Mr. Keane, not binding upon the defendant Allen, pure hearsay and incompetent and irrelevant, don't go to prove any of the issues in this case under the counts of the indictment as laid.

(Testimony of Francis Clayton Keane.)

The Court: Ruling reserved.

Q. (By Mr. Stocking): One more exhibit, exhibit 80; can you identify that exhibit and the return card attached thereto?

A. That's a copy of a letter written by Mr. Johnston and registered, and was received at the postoffice by Mrs. Vermillion, she having signed my name and her own as my agent.

Q. Do you recall receiving this letter?

A. Yes, I got that letter, the original of it.

Mr. Stocking: We'll offer 80 in evidence.

Mr. Etter: I'll object to the admission of this exhibit on the grounds previously stated, it's incompetent, irrelevant and immaterial, it shows on its face that Allen is not privy to any matter set forth therein, no proper foundation has been laid for the admission of the exhibit, it doesn't go to prove any count so far as alleged against [687] Allen in the indictment, and as to him it's pure hearsay.

Mr. Stocking: It was identified by the witness Johnston and refers to the return of his stock certificates, and he connected the defendant Allen with that transaction.

The Court: I don't think it makes any difference whether I admit this or reject it. The government wants it in; the defendant strenuously objects. For the time being, at least, I see no reason to admit it. Ruling reserved as to 80, although I may say that I don't think it makes any difference whether I admit it or keep it out.

(Testimony of Francis Clayton Keane.)

* * *

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

The Court: I may say as to offered exhibits for identification 84, 86 and 88, that I am much of the opinion that each and all of them are admissible. On many theories I've preferred to wait until later, but if I were compelled to make a ruling at this moment, I would rather confidently make the ruling for admission. I see no hurt to anyone if [689] I keep them out temporarily, but I'm letting counsel know that it would seem to me that under the laws relative to this type of a case, in view of the evidence as it is now, that such are admissible.

Now, as to exhibit 80, I think it's admissible. I haven't been able to find out whether the government wants it in, or have I been able to suspect why the defendant wants it out. I know there have been one or two exhibits that the defendant has objected to successfully that my own guess is that the defendant will be trying to get in later, so I think perhaps some of the objections have been on the theory that everything should be objected to, and maybe the court will admit those that the defendant wants in, and the defendant will have both the exhibit and the objection, but frankly, as far as 80 is concerned, I'm not particularly apt to admit it, because I don't know why anyone wants it in.

(Testimony of Francis Clayton Keane.)

Mr. Stocking: It has reference to the specific certificate numbers.

The Court: Oh, I recognize that. It's already in evidence by Mr. Johnston's testimony. If you think the jury is going to be persuaded by that exhibit you're very different than am I. Now, I would rather appreciate—one of the reasons I wanted you to stay, I'd rather appreciate finding out now what exhibits are in, if I can find out [690] with the clerk while you're here.

(Whereupon, the Court ran through the list of exhibits so far identified.)

* * *

(Whereupon, at 5 o'clock p.m., the Court took a recess in this cause until Monday, June 13, 1949, at 10:15 o'clock a.m.) [693]

(Spokane, Washington, Monday, June 13, 1949, 10:15 o'clock a.m. Sixth day of trial.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

F. C. KEANE

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Mr. Stocking: You may cross-examine.

Cross-Examination

By Mr. Etter:

Q. I think you stated that you're an attorney at law—— A. I am.

Q. ——in the State of Idaho, Mr. Keane?

A. Yes.

Q. And did you say how long you had been practicing in the State of Idaho?

A. 29 years.

Q. 29 years? A. Yes.

Q. All that time have you been practicing at Wallace, or other places? A. And Moscow.

Q. Did you commence your practice at Moscow, Idaho? [694] A. I did.

Q. In what year, Mr. Keane? A. 1920.

Q. And when did you remove your practice to Wallace, Idaho? A. In 1931.

Q. Did you have any reason for that at the time, Mr. Keane? A. To make more money.

Q. I see; and you associated with Mr. Walter Hanson? A. I did.

Q. You said, I think, that you had known the defendant Allen for a period of about eighteen years? A. That would be correct.

Q. You didn't have any business dealings with

(Testimony of Francis Clayton Keane.)

Mr. Allen in the forefront of your acquaintanceship with him, did you, Mr. Keane?

A. I think there were some, yes.

Q. There were some?

A. Yes; I've forgotten the details in connection with it, but it was something over a property, I think the name of it was the Silver Cable; I'm not sure of that name, either.

Q. You did some legal work for him?

A. Not for him, no. Mr. Hanson, and as a consequence myself, were representing I think a party by the name of Lang.

Q. And they were involved in the negotiations?

A. They were involved in the litigation, yes.

Q. I see. The first time, I suppose, that you had any business dealings of any consequence, according to your testimony, was the latter part of 1942 or the spring of 1943?

A. That's correct.

Q. Now, at about that time isn't it true, Mr. Keane, that Mr. Allen was in charge of operations of the Callahan Consolidated Mining Company?

A. Correct.

Q. And the Callahan Consolidated Mining Company office is located on the second floor of the Gyde-Taylor Building?

A. That is correct.

Q. And in relation to your office, isn't it true that your office is toward the front of the building facing the street, and the other office is toward the back of the building?

Q. My office faces on 7th Street; part of the

(Testimony of Francis Clayton Keane.)

Callahan Consolidated office at that time faced on Cedar Street; most of it, however, was inside.

Q. And that is just down the hall from your office? A. That is correct.

Q. And you during that time handled some work for the Callahan Consolidated Mining Company that had to do with the legal work surrounding the construction and acquisition of a mill, isn't that about the size of it? A. That's right. [696]

Q. And did you have any other legal work at that time in connection with the Callahan?

A. Oh, there were various matters that Mr. Allen and I discussed from time to time incident to the operation of the Callahan Consolidated.

Q. Incident to the operation of the Callahan?

A. Yes.

Q. And when there was necessity for legal advice Mr. Allen called on you, isn't that so?

A. That is correct.

Q. Now, at that time, approximately 1942 or 1943, were you not counsel for numerous mining companies? A. I was.

Q. And would you name those companies for us, Mr. Keane?

A. Well, I had retainers I think from the Clayton Silver Mines——

Q. Clayton Silver Mines?

A. And possibly Silver Syndicate. I don't know whether the retainer had started at the time that we're discussing or not.

(Testimony of Francis Clayton Keane.)

Q. I see, and were there some other companies likewise? A. No.

Q. And you were likewise not only counsel, as you say, for some of those companies, but you were personally interested in other companies upon which you were serving in one [697] capacity or another?

A. That is correct.

Q. You were then on the board of directors of the Big Friday, so-called, were you not?

A. That's right.

Q. And also on the board with you were Mr. John Sekulic and Judge Featherstone of Wallace, and Chas. Horning, who has testified here?

A. And I think John C. White or J. C. White of the White and Bender Company, were the board of directors at that time.

Q. You were on the board of directors of the Big Friday? A. Yes, from its inception.

Q. And likewise you were then the president and on the board of directors of the Independence Lead Mines Company? A. That is correct.

Q. And the office of the Independence Lead Mines Company was in your office?

A. That is correct.

Q. And that is true likewise of the Friday, or not? A. No.

Q. Was it true of any of the other companies?

A. No.

Q. Were any of the books and papers of any of

(Testimony of Francis Clayton Keane.)

the companies to which you've made reference kept in your office? A. No. [698]

Q. Independence?

A. Independence was, yes; I stated that their office was in my office.

Q. That's correct.

A. Necessarily the books would be there, too.

Q. That's correct. Now, were there any other companies, Mr. Keane, that you were associated with at that time?

A. I think I was a director of the Golconda.

Q. You were a director likewise of the Golconda?

A. Yes.

Q. And was Mr. Horning likewise a director?

A. He was not.

Q. Judge Featherstone?

A. Judge Featherstone was.

Q. John Sekulic?

A. John Sekulic was not.

Q. And any other companies that you can recall that you were associated with at that time?

A. There probably were other companies that I was interested in in one way or the other, but I don't recall them.

Q. Did you become associated in the Delaware Company about that time?

A. That was after—I imagine that was started sometime in the summer or fall of 1943.

Q. Summer or fall of 1943? [699]

A. Yes.

(Testimony of Francis Clayton Keane.)

Q. And Mr. Allen at that time owned about sixty per cent of the stock of the Delaware, is that correct?

A. I think that he probably owned more than that of it.

Q. He owned a substantial and controlling interest in the Delaware Mines?

A. Definitely so, yes.

Q. You, Mr. Keane, did you own any stock at all in the Delaware Mines?

A. Well, not at that time.

Q. And did you do some legal work for Mr. Allen in handling a sale or contract arrangement between the Delaware Mines and the Callahan Consolidated?

A. Not that I recall.

Q. Not that you recall; did you do some legal work for him in the Delaware?

A. I don't know. I would have to search the records on that.

Q. But at that time you had a substantial association with numerous mines in that community?

A. That is correct.

Q. And so far as the law practice and business was concerned, you had a sizable share of it having to do with mining operations in that community?

A. I had; with my retainers and my other business I was progressing. [700]

Q. Now, do you recall anything about the contract arrangement between the Delaware and the Callahan Consolidated, Mr. Keane?

(Testimony of Francis Clayton Keane.)

A. I think—now, as I say, my recollection may be a little faulty on it, but I think that the Callahan purchased the Delaware ground. The Delaware owned a bunch of claims up on the hill north of Wallace, and they purchased those claims for the sum of \$75,000, which was to be paid out of royalties.

Q. Out of royalties from Callahan Consolidated?

A. From Callahan Consolidated.

Q. Over to Delaware? A. That's right.

Q. And those royalty payments commenced and they were being paid in 1943 and 1944, is that correct?

A. I wouldn't say as to the date when royalties—or when the Callahan Consolidated actually became a producer. It did produce, however.

Q. Now, isn't it true that after you became associated with Delaware that the records of the Delaware were kept in your office?

A. That is not my recollection, no.

Q. Were there any records of the company kept in your office at all?

A. For a long time Mr. Allen's stock in the Delaware, it was [701] in a black, one of these small black bags, and he told me that that was stock in the Delaware——

Q. I see.

A. —that that was there, and I might add that very frequently there were checks of the Delaware, signed by Mr. Allen left in my office.

(Testimony of Francis Clayton Keane.)

Q. And isn't it true that these checks you're talking about that were left, signed by Mr. Allen, they were not only signed in blank and left in your office by Mr. Allen, but also you left some checks either in your office or next door with your name signed on them?

A. In with Miss McLean; she was McLean at the time, which is now Mrs. French.

Q. I believe she testified.

A. Yes; we had checks both ways on all accounts.

Q. And after you became associated and an officer with Delaware, wasn't it customary on occasion, when it was necessary, for you to sign your name on Mr. Allen's checks or for Mr. Allen to sign his name on one of yours?

A. That's what I stated a moment ago.

Q. That was the arrangement that was had?

A. Yes.

Q. Now, was it customary likewise that the checks, the royalty checks coming from the Callahan Consolidated to the Delaware, were deposited by somebody in your office? [702]

A. At times they were. At times Mrs. French made such deposits.

Q. Mrs. French made them, and at other times—

A. —Mrs. Vermillion, and possibly on occasion I might have done it.

Q. I see. Now, do you know offhand, Mr. Keane, how much money came into the Delaware Company

(Testimony of Francis Clayton Keane.)

as the result of royalties in, say, the year 1945? Have you any rough idea of it at all?

A. No, I would have to check. I can get those records for you if you wish them, but I would have no independent recollection of it.

Q. Well, this may be possible, to refresh the recollection, would you say that approximately there was in the neighborhood of \$10,400 that was paid in Delaware royalties during the year 1945?

A. Well, I couldn't—it would be a guess, at best. I don't know.

Q. You don't have any recollection?

A. No independent recollection as to the amounts of money that were involved.

Q. All right. Now, at the time that Mr. Allen was interested in the Delaware did he also mention to you that he had some interest or formerly had some interest in the Lexington Silver Mines property in Neihart? [703] A. Yes.

Q. You discussed that with him a number of times? A. Oh, yes; yes.

Q. And didn't he tell you in 1945 or 1944, I'm not just sure which, that they were shut down because of problems resulting from the war, something like that?

A. No. We did have conversations with reference to the Lexington, but the reason the Lexington was shut down was that they had ran out of ore.

Q. That was it? A. Yes.

Q. It had been a large producer?

(Testimony of Francis Clayton Keane.)

A. It had produced substantial sums of money.

Q. Well, over a million dollars in one year, wasn't it?

A. Well, now, that would be a guess, again. I know that it was very substantial, though.

Q. Very substantial? A. Yes.

Q. And they had run out of ore in the particular workings which they had been working?

A. That is correct.

Q. And you and Mr. Allen had some discussion about operating that property, isn't that so?

A. That's correct. Now, just a second; not operating the Lexington property; it was with reference to the procurement [704] of some other claims lying contiguous to and east of the Lexington holdings.

Q. And what were you discussing particularly about the acquiring of those claims?

A. The proposition of taking a lease on the dumps and running the dumps on the Benton group, and I think that——

Q. Ripple?

A. Yes, Ripple was in it, and the Spokane-Idaho, I think; there were a group of them, and I don't want to tie myself as to the names of them.

Q. No; just as you remember them.

A. Yes.

Q. But there were a number of claims that you discussed that were adjacent? A. Yes.

Q. And did you and Mr. Allen discuss the possibility of the organization of a corporation that

(Testimony of Francis Clayton Keane.)

would take in all of that property, including the Lexington and the adjoining claims the names of which you're not sure?

A. I think that was subsequent.

Q. Do you remember about what time?

A. Now, then, so that there's no mistake with reference to it, we did discuss the matter of the formation of what was called the Montana Leasing Company, and a charter was granted that company by the State of Montana. [705]

Q. It was organized as a corporation, was it not?

A. It was organized as a corporation, and we carried on our operations up until the 5th of October as that corporation.

Q. As that corporation?

A. As the corporation, yes.

Q. The 5th of October of what year?

A. '45.

Q. Of '45?

A. Of '43. Now, all of these matters that you've been discussing here relate to 1943.

Q. All right, sir; so until October of '43 you operated pursuant to your corporate structure and corporate organization?

A. Well, it was a semi-corporate structure.

Q. I see.

A. Some of the details incident to actually perfecting the organization were never completed, but they were details, and Mr. Allen and I at that time owned all of the stock in the Montana Leasing

(Testimony of Francis Clayton Keane.)

Company, and consequently we let it operate very loosely.

Q. I see, and in 1943 or 1944 did you have some conversation with respect to using the money of the Delaware Mines Corporation and the Independence Lead Mines Corporation in the development of that property? A. Yes, we did. [706]

Q. And didn't you enter into an arrangement whereby Mr. Allen through his ownership and substantial control of Delaware agreed that the smelter returns and the money involved in the purchase contract with Callahan, being in total about \$75,000, would be deposited toward the development of this property?

A. No. Well, finish your question there, so that I can answer it, or do you want me to go ahead and state how that Lexington, I mean the Delaware, what that Delaware deal was?

Q. Well, yes, if we can find it here. Well, was there an agreement made for the Delaware to invest any of its money in the Montana Leasing Company?

A. Yes.

Q. And was likewise there an agreement on your behalf that you would invest money of the Independence? A. That was not the agreement.

Q. All right, what was the agreement?

A. The agreement was that we would invest the monies that the Independence had in the property, and treat it as a loan to this operation over there.

Q. Treat it as a loan to the operation?

(Testimony of Francis Clayton Keane.)

A. Yes, that was the original agreement on it.

Q. So far as the Independence was concerned?

A. That's right. [707]

Q. Now, in the original agreement that was made with Independence it was likewise understood, was it not, that the loans that the Independence made to the Montana Leasing Company, a corporation, would be paid back at the rate of 5 per cent interest, and on the basis of the returns realized from any ore coming out of the Montana Leasing property?

A. The thought, and as we discussed it, was that when the Montana Leasing Company became financially able to carry itself, that these loans would be paid back out of proceeds realized from the operation of the Montana Leasing Company.

Q. And when, do you recall with any approximation, the date that you finally determined or agreed that that would be done?

A. Well, in the first place, or in the first instance, when those advances were made Mr. Allen put up all of the stock which he had in the Delaware Company as security, as added security, in addition to the obligation of the Montana Leasing Company, as security for the repayment of that money. Now, in addition to that, and I don't recall the exact dates, we purchased, or Mr. Allen arranged to purchase some 600,000 shares, if I recall it, of Baumgartner's stock in the Delaware Company. That purchase was made on payments of a thousand dollars every two

(Testimony of Francis Clayton Keane.)

or three months; I've forgotten the details of it. The escrow was in the [708] Idaho First National Bank, and it was paid with checks drawn on the Montana Leasing Company.

Q. And you have a very distinct recollection of those occurrences?

A. Well, I know that they occurred, yes.

Q. Yes, you remember them very distinctly?

A. Well, I paid part of the money into the bank there myself on it.

Q. That's what I mean. A. Yes.

Q. And as part of this arrangement likewise having to do with the agreement that Independence had with Montana Leasing, Mr. Keane, didn't they—under the arrangement that was made in 1943 wasn't there some agreement that Montana Leasing would likewise give them a stock interest, that is, Independence, in the organization of the group of claims, in the event that a corporate organization was formed?

A. Will you read that question?

Q. Well, let me put it this way;

A. All right.

Q. Did the Montana Leasing agree that Independence might likewise be entitled to a certain stock interest in the event that all of the properties were combined into a new corporate organization?

A. Not at that time. [709]

Q. Not at that time? A. Later, yes.

(Testimony of Francis Clayton Keane.)

(Whereupon, copy of charter and articles of incorporation of Montana Leasing was marked Defendant's Exhibit G for identification.)

Q. Mr. Keane, I'm going to hand you the defendant's "G" for identification, and ask you if you've seen that before?

A. I've seen that or a duplicate of it, yes.

Q. And will you state what that is?

A. That's a charter and copy of the articles of incorporation of the Montana Leasing Company issued by the Secretary of State of the state of Montana.

Q. Yes. Did you prepare these originally?

A. No, I did not.

Q. Mr. Sherman Smith prepared them?

A. Sherm Smith, that's correct.

Q. But these are, and you've seen that before?

A. I've seen that or one identical with it.

Mr. Stocking: No objection.

Mr. Etter: At this time I'll offer the Defendant's Exhibit G in evidence, your Honor.

The Court: Exhibit G admitted, no objection.

(Whereupon, Defendant's Exhibit G for identification was admitted in evidence.)

(Whereupon, copy of minutes of [710] organization meeting of Montana Leasing was marked Defendant's Exhibit H for identification.)

Q. Handing you, Mr. Keane, Defendant's Ex-

(Testimony of Francis Clayton Keane.)

hibit "H", will you tell me what that is, please, and identify it?

A. Copies of the organization meeting of the Montana Leasing Company.

Q. And the signature appearing thereon, F. C. Keane, is that your signature?

A. My signature, and the other signature as secretary is William Mullen; that is, or was, his signature.

Q. You recognize that? A. Yes.

Mr. Stocking: We have no objection.

Mr. Etter: I move the admission at this time, your Honor, of Defendant's Exhibit H.

The Court: Exhibit H is offered; is there any objection?

Mr. Stocking: No objection.

The Court: Exhibit H admitted.

(Whereupon, Defendant's Exhibit H for identification was admitted in evidence.)

(Whereupon, lease between Lexington Mining Company and Montana Leasing Company was marked Defendant's Exhibit I for identification.)

Q. I hand you for identification Defendant's "I", Mr. Keane; [711] I'll ask if you can tell us what that is?

A. That's a lease that was entered into between the Lexington Mining Company on the one hand, as lessor, and the Montana Leasing Company as lessee.

(Testimony of Francis Clayton Keane.)

Q. You recall that lease agreement?

A. Well, I don't know as I particularly do. I knew that such a lease was entered into.

Q. You signed, didn't you, at that time?

A. I don't know whether I did or not; I might have done it, and again I might not have, but it was the lease under which we leased the property of the Lexington Mining Company over there, that is, their personal property.

Q. For operation by the——

A. For operation of these dumps.

Q. ——by the Montana Leasing Company, a corporation?

A. Well, at that time, yes.

Q. That was in June of 1943, it was a corporation.

A. That would be right. I don't believe the organization of it had been completed at that time, of the Montana Leasing Company; I don't believe that we had a charter. Would you show me that exhibit of the articles of incorporation for a minute, and see what date——

Q. July of 1943, you're right.

A. July of 1943; that's right.

Mr. Stocking: We have no objection. [712]

Mr. Etter: I move at this time that Defendant's "I" be admitted, your Honor.

The Court: Exhibit I is offered, there's no objection; admitted.

(Whereupon, Defendant's Exhibit I for identification was admitted in evidence.)

(Testimony of Francis Clayton Keane.)

(Whereupon, minutes of meeting of directors of Independence was marked Defendant's Exhibit "J" for identification.)

Q. (By Mr. Etter): I hand you for identification Defendant's "J" and ask you to examine that, Mr. Keane.

A. That's a photostatic copy of minutes of a meeting of the Independence Lead Mines Company, of the directors, held on June 23, 1943.

Q. Is that a——

A. It looks to me to be a photostatic copy of——

Q. But a substantially correct copy?

A. Well, I would have to compare it, of course, with the original to say that it was, but that's a photostatic copy of my signature, and also a photostatic copy of Mr. Evans' signature, too.

Q. Such a meeting was held?

A. I think that it was, yes.

Q. And such matters were discussed?

A. I think that's correct. [713]

Q. And incorporated in the minutes which you signed?

A. I think that is correct, yes.

Mr. Stocking: We have no objection.

Mr. Etter: I move that Defendant's Exhibit "J" be admitted in evidence, your Honor.

The Court: Exhibit J admitted.

(Testimony of Francis Clayton Keane.)

(Whereupon, Defendant's Exhibit J for identification was admitted in evidence.)

Mr. Etter: For the purpose of following continuity, with the Court's permission I'd like to read this to the jury.

(Whereupon, Mr. Etter read Defendant's Exhibit J to the jury.)

(Whereupon, minutes of meeting of directors of Independence, 10/12/44, was marked Defendant's Exhibit "K" for identification.)

Q. Handing you Defendant's K for identification, Mr. Keane, will you examine that?

A. It's the minutes of the meeting of the Independence Lead held on October 12, 1944, signed by Glynn D. Evans as assistant secretary and myself as president.

Q. Do you recall such a meeting, Mr. Keane?

A. I think so. The photostatic copy does not include Mr. Lakes' statement, which I think was in writing.

Q. But this is a substantial account of the meeting as you [714] remember it?

A. Outside of the fact that Mr. Lakes' report is not attached.

Q. Other than that, these are the minutes?

A. Right. They wouldn't be the minutes without a copy of his report.

Q. Aside from that, however, this is a substantial representation of what occurred?

(Testimony of Francis Clayton Keane.)

A. That is right. That's what I stated.

Mr. Stocking: We'll object to this Exhibit K on the grounds that it's not material to any issue in this case; it's on a matter that isn't proper cross-examination.

The Court: It's not offered yet; your objection is premature.

Mr. Etter: At this time I'll make an offer, your Honor.

The Court: All right; the objection you made you wish to apply?

Mr. Stocking: I make the objection which I just stated.

The Court: All right.

Mr. Stocking: It appears to be a record of the Independence Company.

The Court: I do not see how it's proper cross-examination of this witness.

Mr. Etter: It may be, your Honor, that it should be [715] put in on his direct testimony. If they object on that ground we'll withhold it at this time.

The Court: Objection sustained on "K" on the ground it apparently touches some matter that was not involved in Mr. Keane's direct examination.

Q. Pursuant to the agreement as indicated by Defendant's Exhibit J, Mr. Keane, the first meeting authorizing the loaning of money to Montana Leasing, isn't it true that the Independence Company then did put substantial funds into the operation of the Montana Leasing pursuant to this resolution?

(Testimony of Francis Clayton Keane.)

A. May I see the resolution once more?

Q. I thought you recalled it.

A. Well, I probably do, but I want to be certain that I do, counsel. That is correct.

The Court: That is Exhibit J?

Q. (By Mr. Etter): Exhibit J, your Honor. I'll ask you, Mr. Keane, if pursuant to that resolution in 1943 the Independence didn't advance to the Lexington, or I mean the Montana Leasing, the sum of approximately \$25,000?

A. I couldn't state what sum was advanced without having additional records. It was a substantial sum of money, yes.

Q. And pursuant to the resolution, in the year 1944 there was advanced the sum of \$65,000 approximately to the Montana Leasing? [716]

A. As I say, I would have to check records as to amounts. I know there were substantial advances made from time to time.

Q. And that in the year 1945 there was a total of approximately \$73,000 or \$74,000 advanced pursuant to the resolution, to the Montana Leasing Company?

A. I'm not confining myself to the amount; again there was a substantial sum of money advanced.

The Court: How much was that?

Q. Approximately \$73,760. Do you recall, Mr. Keane, whether or not you caused an audit to be made of the books of the Independence having to

(Testimony of Francis Clayton Keane.)

do with this transaction and others, on or about March of 1947? A. I possibly did, yes.

Q. You possibly did? A. Yes.

Q. And the audit was made by Mr. L. J. Randall, is that not so, a certified public accountant of Wallace, Idaho?

The Court: Audit of what concern?

Q. The Independence Lead Mines Company, pertaining to this transaction and other transactions.

A. I would want to see the audit, necessarily, before I'd be in a position to testify to it.

(Whereupon audit of Independence made by Randall, 1/1/43 to 12/31/46 was marked Defendant's Exhibit "L" for identification.) [717]

Q. I'll hand you Defendant's "L" for identification, and ask if you can tell me what that is, Mr. Keane?

A. An audit report made by Mr. Randall, certified public accountant, for the years ending December 31, '43, the years '43, '44, '45 and '46.

Q. And isn't it a fact that this audit was retained in your office with your files after it was made?

A. I couldn't tell you one way or the other.

Q. You have seen this audit?

A. I imagine it was delivered at my office. I don't recall having seen it.

Q. And this is Mr. Randall's signature that appears on the audit?

(Testimony of Francis Clayton Keane.)

A. Let me see it once more. I'm satisfied that it is.

Q. Excuse me?

A. Yes, that is his signature. He writes worse than I, is the reason I know.

Q. Now I'll call your attention to the page in the exhibit which is entitled Schedule A-1, and I'll ask if you will look at that and tell me what it represents, Mr. Keane?

A. It's supposed to represent an analysis of advances to Montana Leasing Company for the period January 1, '43, to December 31, '46.

Q. And have you examined those figures, Mr. Keane?

A. I wouldn't know anything about the figures if I did examine [718] them.

Q. I see.

A. I wouldn't know whether they were correct, or have any idea.

Q. Isn't it true that you caused a copy of this audit to be attached to a 10-K report required by the Securities and Exchange Commission, signed the same, and filed it with the Standard Stock Exchange?

A. That's within the realm of possibility.

Q. You believe you did that?

A. I say, it's within the realm of possibility. I have no independent recollection of having done so.

Q. You have no independent recollection of having done so?

(Testimony of Francis Clayton Keane.)

A. No, but it probably was done.

Mr. Stocking: May I ask a preliminary question——

The Court: You may.

Mr. Stocking: ——concerning the Defendant's L.

Voir Dire Examination

By Mr. Stocking:

Q. Mr. Keane, on the schedule A-1 which Mr. Etter showed you was shown an advance to Montana Leasing Company by Independence Lead Mines of \$73,760.18. Do you have any independent recollection as to during what months that sum was advanced?

The Court: Of 1945?

Q. Yes. [719]

A. It was done sometime prior, if I recall, to the organization and the disposition of stock in the Friday Extension, or about that time. I'm not sure, however, of that.

Q. That's your best recollection?

A. That is my recollection.

Cross-Examination

(Continued)

By Mr. Etter:

Q. I might ask you, Mr. Keane, wasn't there—you said that's your recollection. Is it your statement that all of this money in 1945 was invested

(Testimony of Francis Clayton Keane.)

in Montana Leasing before the organization of the Lucky Friday Extension?

A. I didn't say that. I said it's my recollection, and that's independent of any records.

Q. Independent of any records?

A. Yes, is that most of it was made prior to the organization of the Lucky Friday Extension Company.

Q. Wasn't there a substantial sum of money, approximately \$22,000 or \$23,000, that was realized from sale of stock, that was invested in this company after August of the year 1945?

A. That's possible.

Q. That's possible? A. Yes.

Q. So that in that event, on that statement, there could have been, on your present recollection, approximately a third of this total put in—— [720]

A. That is possible.

Q. ——in August or September, isn't that so?

A. Well, that might be possible. As I say, I have no independent recollection of any specific advances or transfers from one place to another.

Q. That was long after there was any organization of Lucky Friday?

A. Well, it was about the time of the organization, along in there, and prior to the time that there was actually a good market on Friday Extension.

Q. Yes.

A. That market got good, as I recall it, in the spring of '46.

(Testimony of Francis Clayton Keane.)

Mr. Etter: I'll offer the Defendant's "L" at this time.

Mr. Stocking: We'll object to Defendant's L as not being a complete accounting report of the matters which might pertain to issues in this case or which would be proper on cross-examination of this witness. The only matter that I can see which would be important or which might touch upon it was this advance of \$78,000 during 1945. This witness on my questioning indicated that that money had all been advanced, to his best recollection, prior to the date of incorporation of Extension. I'm objecting to it on the grounds of materiality also.

Mr. Etter: I'd like to call the Court's attention [721] to part of the record the other day, when he was asked about the advances in the records in evidence of \$10,000 to the Independence Lead Mines by Pilot, and the Court said "What company" and the witness answered "Independence Lead Mines Company, that was advanced." Question "Who was Independence Lead Mines Company at that time?" Answer "Well, I was in charge of it at that time."

The Court: Counsel, I'm not interested in that. This witness testifies that that probably is an audit, that it is Mr. Randall's signature, that he doesn't know about the correctness, that he doesn't know if he ever read it, that it probably was left in his office, that quite possibly he attached a copy of it to a report that was filed. Now, on the basis of that am I permitted to bring it in evidence? If Mr.

(Testimony of Francis Clayton Keane.)

Randall were here and testified that that was correct, I might be permitted to do it, but on the basis of this situation——

Mr. Etter: We'll withhold it, your Honor, at this time.

The Court: Are you withdrawing the exhibit?

Mr. Etter: I'll withdraw the offer at this time.

The Court: All right, it's withdrawn.

Q. (By Mr. Etter): You say that what you're saying, then, Mr. Keane, is that you don't have any independent recollection of this money being transferred or loaned? [722]

A. Well, I know that a very substantial sum of money was transferred.

Q. But that's all?

A. As far as particularizing as to the year or the amount that was transferred in any one year, I couldn't do it. It would be a guess, that's all.

Q. In other words, what you're saying is you wouldn't know what was advanced in 1943, or 1944, or 1945, or 1946, would you?

A. No, I would not.

Q. Don't remember anything about those items except that there was an amount advanced of substantial size?

A. I don't know whether any money was advanced in 1946.

Q. Well, leaving 1946 out.

A. I know there was money during '43, '44 and '45; now, the amounts in any specific year I couldn't give you.

(Testimony of Francis Clayton Keane.)

Q. And you don't remember about this audit?

A. Well, I assume that that is an audit.

Q. But you're not sure of anything?

A. If I recall correctly I've never gone over that audit before.

Q. Is there any reason, Mr. Keane, that you have no recollection of any of these things?

A. Yes.

Q. What is it? [723]

A. Intoxication.

Q. During what period of time?

A. Oh, from shortly after Mr. Allen and I were very active together I drank very heavily, up until the fall of '47.

Q. Until the fall of '47?

A. That is correct; very heavily. I was practically a common drunkard.

Q. I see; you don't recall any of these things, then?

A. I recall some of them, yes. I had moments of sanity at intervals, but I was drinking very heavily.

Q. And these things that you testified to yesterday about Mr. Allen's participation with you, you recall those all distinctly, as being periods of your sanity? A. What?

Q. Those were periods of sanity that you remember?

A. Not necessarily, Mr. Etter. I recall those

(Testimony of Francis Clayton Keane.)

incidents. There's numerous other things that I recall during that period of time.

Q. Every incident in which Mr. Allen had any participation with you—— A. Oh——

Q. ——just a minute; in the Lucky Friday Extension, you remember that, don't you?

A. Oh, no, I couldn't possibly remember——

Q. But—— [724]

The Court: Let him finish.

A. ——all of the times, but I've had conversations with Mr. Allen; where we had them, or who was present, or what we were doing, it was a matter of daily conversations.

Q. I see. Matter of fact, you've probably forgotten just as much as you've testified to, is that it?

A. Probably have. I wouldn't be able to settle a case one way or the other on that.

Q. But you probably have?

A. Well, it's within the realm of possibility, let's put it that way, that I have forgotten numerous things that occurred, yes.

Q. But these things that you testified to with reference to Mr. Allen the other day, there's no question of realm of possibility there; they actually occurred?

A. I recall that they did, yes.

Q. But everything else, it's within the realm of possibility?

A. No, I didn't say that. Now don't put words in my mouth.

(Testimony of Francis Clayton Keane.)

Q. Well, what is it?

A. I said that we probably had numerous conversations and numerous transactions between ourselves that I've entirely forgotten; that's what I said.

Q. Now, you stated yesterday you remember Mr. Allen gave you a \$40,000 check?

A. Yes, I recall the details of that quite distinctly. [725]

Q. Now, isn't it a fact that that check was received in your office by mail?

A. Absolutely not.

Q. And isn't it a further fact that when you met Mr. Allen you were coming from the bank and had already gotten the check, and ran into Mr. Allen and Mr. Horning coming down the street?

A. Absolutely not.

Q. And isn't it a fact you gave the \$25,000 check to Mr. Horning, and Mr. Horning took it and stapled it to a sheaf of papers he was carrying under his arm?

A. Absolutely not.

Q. And you remember that?

A. Absolutely. I might point out that I had to go back to the bank a second time on that transaction, and that was the reason that you had a deposit slip there drawn to the Coeur d'Alene Mining Company or Mines Company, whatever it is, or Corporation, I guess it is, and went back and surrendered the duplicate of that and got a cashier's check. I wonder if I could have a little more water?

(Testimony of Francis Clayton Keane.)

The Court: You may. I think it's time for the morning recess, and I might say this, counsel; I had thought we might run until 12:15 today to attempt to compensate for starting at 10:15. We'll be at recess for ten minutes.

(Short recess.) [726]

(All parties present as before, and the trial was resumed.)

Cross-Examination

(Continued)

By Mr. Etter:

Q. This condition of yours that you've told us about, Mr. Keane, did that exist when you organized or were participating in the Montana Leasing Company, a corporation?

A. I was drinking at the time.

Q. I see; but do you remember that?

A. Yes.

Q. You remember that? A. Yes.

(Whereupon, promissory note Montana Leasing to Independence, 10/14/44, for \$60,000, was marked Defendant's Exhibit "M" for identification.)

Q. I'm going to hand you Defendant's Exhibit M for identification, and ask you to look at that and tell me if you know what it is?

A. That's a note signed by the Montana Leasing Company. I signed Mr. Allen's and my own name to it, as partners, dated October 14, 1944.

(Testimony of Francis Clayton Keane.)

Q. When was this note that you've described here, when was this instrument drawn, Mr. Keane?

A. I couldn't tell you for sure.

Q. It's dated on what date?

A. It's dated October 14, 1944. [727]

Q. Isn't it a fact that you didn't draw that instrument until sometime in 1947, the latter part of 1947?

A. I couldn't answer that.

Q. All right; is it a fact that you went up to Mr. Allen's office with this instrument, said that you had been subpoenaed to testify in front of the S. E. C., and you wanted him to sign this as a partner so you could explain what happened in the Independence?

Mr. Stocking: We'll object to that as not proper cross-examination.

The Court: Overruled.

A. That is not a fact.

Q. And isn't it a fact that when you went up to Mr. Allen's office with this instrument, Mr. Allen says "There never was a partnership, and I'm not going to sign it"?

A. No, absolutely not.

Q. You signed his name?

A. I signed his name.

Q. Why?

A. I had a perfect right to.

Q. As a matter of fact, didn't you tell the Com-

(Testimony of Francis Clayton Keane.)

mission when they were questioning you that Mr. Allen and you had signed this?

A. No, I did not.

Q. What did you tell them? [728]

A. I told them there was a note. I don't recall what my testimony was.

Q. But your testimony now is you put Mr. Allen's name on it?

A. That is correct.

Q. And you wrote it so it would appear like Mr. Allen's signature?

A. Absolutely not.

Q. I'll ask you if the writing isn't different?

A. No. Give me a pen and I'll demonstrate it to you.

Q. I'm just asking you.

A. I say no; the way I'd ordinarily write it.

Q. And you signed Allen's name to it?

A. That is correct.

Q. But you don't recall when you drew this note?

A. No, I would not. I would have to have Mrs. Vermillion's notebooks on it.

Q. Isn't it a fact that you didn't draw the note in 1944?

A. I couldn't answer that, Mr. Etter.

Q. You saw Allen, of course, numerous times, as you say?

A. Oh, definitely, yes, repeatedly between October of 1944 and late in the summer or fall of 1946.

(Testimony of Francis Clayton Keane.)

Q. Did you ask Mr. Allen to sign this at any time?

A. I can't tell you whether I did or whether I didn't. I would think that, if he were asked to sign it at any time during that period of time, he would have promptly signed [729] it.

Q. He would have promptly signed it?

A. Yes.

Q. But you didn't ask him to sign it?

A. That is probably correct.

Q. And do you have any reason why? You saw him so many times, and as you've testified here, you and he were in all these schemes, at least that's what you say; what reason was there for not asking Mr. Allen to sign it?

A. What reason was there for to ask him?

Q. Well, you say Mr. Allen was in with you on a partnership?

A. That is correct. Necessarily either member of a partnership can bind the partnership.

Q. So you used his signature with that theory?

A. That would be right.

Q. And you say now that you never ever told anybody that was his signature?

A. I never made any such statement.

Q. All right; did you tell anybody that was Allen's signature? A. Never.

Q. What did you say about it?

A. Well, I don't know if I was ever inquired. If

(Testimony of Francis Clayton Keane.)

there was an inquiry made, I certainly would not say that that was Allen's handwriting.

Q. I'll ask you if Mr. Denney, seated right here, didn't ask [730] you about this note?

A. He asked me questions about it, yes.

Q. And I'll ask you if Mr. Denney, sitting here, didn't ask you about Allen's signature?

A. Not that I recollect of. If he did, the answer that he would have gotten was "That's Allen's name, written by me."

Q. That's what you remember your answer was?

A. If any were asked, if a question were asked of me, that would have been my statement in reply.

Q. You don't recall now that it was asked?

A. I don't remember whether it was or whether it wasn't.

Q. Did you sign Allen's name on anything else?

A. Probably have.

Q. On any exhibit that you've examined that's been here?

A. Not that have been submitted here, no.

Q. You've examined numerous ones, haven't you, maybe 75 or 100 of them?

A. A few of them. I've examined some checks that bear his signature.

Q. Did you put his name on the checks?

A. No; written by himself.

Q. I'll ask you if you signed his name on any other instrument other than this one that I have here?

(Testimony of Francis Clayton Keane.)

A. I couldn't answer that, Mr. Etter.

Q. You don't recall any, do you? [731]

A. I don't recall whether I did or didn't.

Q. It's your statement now that you didn't go to see Mr. Allen in 1947 about this?

A. That is definite, yes; I did not.

Q. For the purpose of attempting, Mr. Keane, to refresh your recollection, do you remember that in 1947 or the latter part of it that you were subpoenaed to appear before the S. E. C.?

A. I think early in 1947 I was.

Q. All right, and I'll ask you if at that time Mr. Randall, the accountant, wasn't likewise subpoenaed?

A. I wouldn't know.

Q. I'll ask you if you remember being here in Spokane at the Davenport Hotel with Mr. Randall on the day that both of you were to testify before the Commission?

A. I have been in Spokane and at the Davenport Hotel with Mr. Randall. Now, whether it was that day or some other, I don't know.

Q. And do you recall that you discussed that matter with Mr. Randall before he testified?

A. No, I do not recall.

Q. That doesn't refresh your recollection?

A. It does not.

Q. You don't recall then calling Mr. Allen and talking with him about it at the hotel? [732]

A. Where did the conversation take place?

(Testimony of Francis Clayton Keane.)

Q. At the Davenport.

A. And Mr. Allen down at the Davenport?

Q. Yes.

A. He wasn't down at the Davenport.

Q. You don't recall that?

A. He wasn't down there, that is, in my room, or I didn't see him down there.

Q. And even though you might or might not have been at the Davenport, your recollection is now you didn't see him at his office then either?

A. That is correct.

Q. So far as this instrument is concerned, you don't believe that you talked to him about it in 1947?

A. I don't remember having talked to him so that I'm specific here.

Q. Do you recall that you talked with him at any time from the date that appears here, October 14, 1944, until the present about this, Mr. Allen, that is?

A. Not that I recall. I talked to him about that we'd have to shape that up, yes, that note.

Q. You'd have to shape this up? A. Yes.

Q. What did he say?

A. He agreed to it the way he agreed to everything up until [733] the time we had that conversation late in 1946.

Q. Actually what he said was he agreed that those were the terms that the Montana Leasing Company entered into with the Independence, he agreed with you, didn't he? A. Certainly.

(Testimony of Francis Clayton Keane.)

Q. He agreed that was the original agreement back in 1943? A. That's right.

Q. But he disagreed that he was a partner of yours, isn't that right?

A. Never in his life. Why was he writing checks on the Montana Leasing account?

Q. Just answer the question.

A. I say definitely no, he never denied it.

Q. He didn't refuse to sign this?

A. Never.

Q. Then when you were talking to him about it and you said you'd have to shape it up, why didn't he sign it?

A. Because I neglected to have him sign it.

Q. So you just went ahead and signed his name?

A. That's right.

Mr. Etter: I move at this time that Defendant's Exhibit M be admitted in evidence.

Mr. Stocking: We have no objection.

The Court: Admitted.

(Whereupon, Defendant's Exhibit M for identification was admitted [734] in evidence.)

Q. (By Mr. Etter): When was the first time that you heard anything about the organization of the Lucky Friday Extension, Mr. Keane?

A. Shortly before we organized it.

Q. What was your best recollection as to a month in the year that it was organized?

A. What date was it organized?

Q. 1945.

(Testimony of Francis Clayton Keane.)

A. What month? If I could see—there's an exhibit, I think. If I could see the exhibit I would have a better idea.

Mr. Stocking: It's in that state file.

The Court: Well, isn't it agreed by both sides it was organized about May, 1945?

Mr. Etter: Yes, I think that's it, but I don't want to be mistaken on it.

Mr. Stocking: Signed the 25th of May, acknowledged the 28th of June.

Q. (By Mr. Etter): The articles indicate about June, the latter part of June.

A. The latter part of June? It was several days, a few days, before that.

Q. A few days before that? A. Yes.

Q. Did you have any conversations with Mr. Horning or Mr. [735] Sekulic about the organization of the Lucky Friday Extension?

A. No. Mr. Allen handled all negotiations with reference to the procurement of the contract from the Friday, the Big Friday, and matters of that kind.

Q. Don't you recall that you and Mr. Horning and Mr. Sekulic discussed that contract prior to its organization, the organization of the Lucky Friday Extension? A. Probably casually.

Q. And when you talked about it casually, what was said by Mr. Sekulic to you?

A. I couldn't—Mr. Sekulic wasn't doing the saying; Mr. Horning was speaking for the Friday.

(Testimony of Francis Clayton Keane.)

Q. Mr. Horning was speaking for the Friday?

A. That's correct.

Q. Now, isn't it true that you stated to Mr. Sekulic that he would get a block of around 650,000 or 690,000 shares?

A. We finally determined, I was present at the time that was determined, as to the amount of stock that Sekulic and the parties interested with him were to receive. That was discussed up in the Samuels Hotel, in Allen's room.

Q. That's correct Sekulic was interested in it, wasn't he?

A. Definitely was. Now, at the time we determined how much stock was going to go to various parties, I was present in that conversation, participated in it. [736]

Q. And you were then interested in the Big Friday yourself, weren't you, Mr. Keane?

A. I was a director. My interest in the Friday at that time had been sold down to where it was practically nil, as I recall it.

Q. But you were interested as a director?

A. At one time I was very substantially interested in the Big Friday.

Q. That's right.

A. I was one of the principal stockholders; I guess there were four or five of us had the bulk of the stock that was outstanding.

Q. And for some time prior to the conversation that you had with Horning and with Sekulic and

(Testimony of Francis Clayton Keane.)

with Allen, as you say, for some time you had loaned the Big Friday certain machinery and otherwise of the Independence, hadn't you?

A. That is correct, yes.

Q. And it was a common occurrence, wasn't it, I'll ask you this, for the Independence to not only loan machinery, but to loan money to different companies?

A. Loaned some to the Callahan Consolidated.

Q. That's right.

A. On two occasions.

Q. And while you had been associated with Independence they had likewise loaned considerable money to Clayton when it [737] was first starting?

A. They had given very substantial loans and gifts to the Clayton Company.

Q. That's right.

A. That was prior to the time, however, that I was interested as a director in Independence.

Q. You were attorney, however, for them, weren't you?

A. Not at that time; I was subsequently.

Q. But the Independence operation has been predicated a great deal on investments and loans to other companies, hasn't it, rather than development of its own ground?

A. Well, its own ground—I might explain that. A shaft, or I don't know whether a shaft or a winze was sunk 500 feet and some cross cutting down at the bottom of it proved very unsatisfactory,

(Testimony of Francis Clayton Keane.)

very discouraging, and if any development at the Independence be had, it will have to be at great depth; by that I mean three or four thousand feet.

Q. But they had loaned a great deal of machinery to the Big Friday, in which you were interested?

A. They loaned machinery to Big Friday, loaned it to other companies.

Q. That's correct.

A. It was the practice at all times since I have any knowledge of Independence to make such loans.

Q. That's correct, it was a common practice. [738]

A. Well, it's a common practice in the industry up there to loan items that you have no use for, to somebody that has use for them.

Q. So this condition was existing at the time that you and Mr. Sekulic and Mr. Horning and these people were talking about the development of the Extension?

A. That would be right, yes.

Q. And isn't it true that during that conversation Mr. Sekulic said he owned the whole hill over there, something like that?

A. I think he did, yes. He might have indulged in a little braggadocio at times.

Q. Yes, that's correct, and Mr. Sekulic proposed that these claims would be located, didn't he?

A. I wasn't present at the time that those original negotiations were entered into.

(Testimony of Francis Clayton Keane.)

Q. But as part of the——

A. But as I stated here yesterday, if you'll permit me to go on, Mr. Allen called me. He had a room at the hotel, and he told me that he'd stayed up at John's the night before, and they drank a lot of Dago Red, and it evolved that John had a home-stead up there, or something of the kind, I've forgotten exactly what term he did apply to it; said to set that up into a company and develop it through the Friday. [739]

Q. So later on a contract was negotiated?

A. That is correct.

Q. And in that Mr. Sekulic's proposition of the Lucky Friday Extension locating the claims and transferring them to the Big Friday was incorporated, wasn't it?

A. I don't know whose thought that was.

Q. Well, I mean it was incorporated in the contract?

A. It was done, that's the way it was handled. Now, whose idea it was I couldn't say.

Q. But it was done, wasn't it?

A. I said that it was done; that's the way it was handled.

Q. Now, what consideration was to pass to Mr. Sekulic and these other people for the execution of that contract?

A. A block of stock, a substantial block of stock.

Q. 670,000 or 690,000 shares, isn't that about it?

A. Something of the kind. That transaction was

(Testimony of Francis Clayton Keane.)

finally consummated up in Mr. Allen's room in the Samuels Hotel, Sekulic, Allen and myself being present, as I recall it, and the exact details of it I wouldn't recall.

Q. Well, Mr. Horning and Judge Featherstone were both there too, weren't they?

A. Not on the stock transaction, no.

Q. They weren't?

A. They were not, as I recall it.

Q. Where was the arrangement made to give Mr. Horning part of [740] that stock?

A. That must have been a deal between he and Sekulic.

Q. And was there a deal also between Sekulic and Judge Featherstone to give him part of it, too?

A. I would imagine that—now, Judge Featherstone was to receive some stock.

Q. I see.

A. And it was finally determined that Judge Featherstone's stock was to come out of the Sekulic stock, the so-called Sekulic stock.

Q. Sekulic was to get this block and then it was to be cut up, wasn't it?

A. Yes. Now, I might add in there, Mr. Etter—

Q. All right.

A. —that the contract that was entered into on behalf or between the Friday X and the Big Friday and the Hunter Creek were all very advantageous to the Big Friday.

Q. They were, weren't they?

(Testimony of Francis Clayton Keane.)

A. They were very, very advantageous——

Q. Very advantageous.

A. ——to the Big Friday. By the same token, they were advantageous to the other two companies because of the added depth that could be procured by virtue of the workings that the Big Friday had at that time.

Q. That's right. Now, don't you recall that the situation [741] then about that time was roughly this: That the Big Friday was to drive out toward the Lucky Friday Extension property, that's true, is it not, in the original development?

A. I don't recall whether that is correct or not.

Q. All right, what would be correct?

A. Now, the thing that is confusing me on it is this: At one time, I think it was on the 400, the Friday—it was on the 400—the Friday drove to the west out there and followed a showing for oh, three or four hundred feet. Now, that was at the time that John Sekulic was operating the Big Friday, and I had discussed with him the showing out there, and he said that it looked promising.

Q. And the situation under the agreement was to the effect that the Lucky Friday Extension would put up the money for the Big Friday to do the work?

A. The contract would have to speak for itself as to the proportion of the monies that was to be put up for the purpose of sinking that shaft, as far as

(Testimony of Francis Clayton Keane.)

the Hunter Creek and the Friday X were concerned. I couldn't remember what the exact terms of the contract were.

Q. But the result, whatever the terms were, the result was that the Lucky Friday Extension put up considerable money to the Big Friday to do the work?

A. That is correct.

Q. Somewhere upwards of \$90,000 finally, wasn't it? [742]

A. I wouldn't—again, I know that it was a substantial sum, but as far as pinning me down to any specific amount, I couldn't; it would be just a guess, Mr. Etter.

Q. Now at that time, Mr. Keane, you were, as you say, you were on the board of directors of the Big Friday?

A. That is correct.

Q. Now, isn't it a fact that at that time the Big Friday was in financial plight, as it were?

A. No, I would say that it never was.

Q. It never was?

A. Now, in order to expedite the development of it, it did not have enough money to sink that shaft the distance that it was sank.

Q. That's right.

A. But it could have sank, as I recall it, another 200 feet and mined out and got some more ore from time to time.

Q. They didn't have the money to do what they wanted?

A. Well, to develop in a hurry, no, they did not.

(Testimony of Francis Clayton Keane.)

Q. What was the price of the Big Friday stock just about the time this contract was to be entered into?

Mr. Stocking: I think we'll object to the price of the Big Friday stock; it's not proper cross-examination.

A. I couldn't answer it anyway.

Q. You don't know?

A. I couldn't answer it. I wouldn't have any idea from day [743] to day.

The Court: I have not ruled. That means he's permitted to answer it, and he says he can't answer.

Mr. Etter: I thought I had followed before you had ruled, your Honor, and I didn't want to.

The Court: That settles it; you may proceed.

Q. (By Mr. Etter): After the contract was entered into and it became public knowledge what was going to be done, isn't it true then that the stock of the Big Friday started to climb rapidly on the board?

A. I wouldn't say that that was true. I think that the market as a whole took a jump at about that time, or somewhere in there. Now, as I say, I'm merely talking from a casual thought on it.

Q. Well, whatever the reason may be, I won't ask you that, whatever the reason may be the Big Friday stock at that time did increase considerably in value?

A. I think this deal with the Friday X enhanced the value of the Big Friday stock.

(Testimony of Francis Clayton Keane.)

Q. It enhanced it considerably?

A. I would say definitely it did, yes.

Q. Now, as a matter of fact, after this contract as you say had enhanced the value, isn't it true that three of the people who had been discussing this proposition, Judge Featherstone, Mr. Horning, and John Sekulic, sold a block [744] that they had in the Big Friday totaling 150,000 shares, after the market got up?

A. I have always wanted to know the exact details of that, Mr. Etter. I knew that such a deal was in contemplation, Mr. Allen having handled it, and the understanding between Mr. Allen and myself were that we were to split on the profit to be realized from that transaction. The details of it I've never gotten, and it's the first time, if your figures are right that they put up 50,000 shares apiece there, it's the first knowledge I have or have had as to the amount involved.

Q. Now, this is the Big Friday I'm talking about.

A. That's what I'm talking about too.

Q. You and Mr. Allen didn't have any of that stock?

A. Not any sizeable amount; I think mine was probably gone at the time this play at the market was made.

Q. Mr. Allen didn't have any of that stock?

A. No.

(Testimony of Francis Clayton Keane.)

Q. But these other three men who were in on this, they had it, didn't they?

A. Yes, and they put that stock—in that transaction that stock went to \$1.75, as I recall it.

Q. And what was it, around 20 cents when the contract——

A. Oh, around 20, 30, 40.

Q. It went from somewhere around 20 or 30 cents to \$1.75 after [745] the contract?

A. Yes.

Q. And then these three gentlemen sold this 150,000 shares at that amount?

A. They sold that stock at a price of something a little over a dollar, as I recall it. Now, I have never gotten the details of that from anybody.

Q. Now, do you recall, Mr. Keane, that a contract between the Lucky Friday—do you recall ever seeing the contract, the original contract, between the Lucky Friday and the Lucky Friday Extension?

A. Let me see it and I'll advise you.

Mr. Etter: Well, I'll have it marked here; I was just going to ask you.

(Whereupon, agreement between Lucky Friday and Lucky Friday Extension was marked Defendant's Exhibit N for identification.)

Q. Handing you Defendant's N for identification, I'll ask you if you recognize that? You might look at the last sheet, Mr. Keane.

(Testimony of Francis Clayton Keane.)

A. I acknowledge the signatures of Grismer and Evans here on behalf of the Lucky Friday Extension Company, yes.

Q. Yes.

A. And I recognize Sekulic's signature, I recognize Emacio's signature on behalf of the Friday, and I equally recognize [746] Grismer and Evans on behalf of the Friday Extension.

Q. I see.

A. And it purports to be an agreement entered into on the 30th day of June, 1945, between the Friday, the Big Friday, and the Extension Company.

Q. And I'll ask you if this isn't true, that you had some discussions with Mr. Horning, or rather with Mr. Sekulic, and early in the organization with Mr. Horning, about the type of agreement that would be entered into, having reference to this agreement? A. Probably I did.

Q. And isn't it true that for some considerable time after the agreement itself was discussed, you had advised Grismer and Evans not to sign it?

A. That is not correct.

Q. That's not correct? A. No.

Q. Do you recall that Allen came up to you and asked you, or told you, that Horning had asked Allen to go and see you about why this contract wasn't signed? A. No.

Q. You don't recall that? A. No.

Q. And do you recall that you said to Mr. Allen

(Testimony of Francis Clayton Keane.)

“Well, I think I’m entitled to about 50,000 shares of the stock, because [747] I sold my stock out in the Big Friday when it was very cheap, and when they needed money to keep the operation going”?

A. Mr. Allen and I discussed the matter of the Big Friday bonusing us for some of the benefits that the Big Friday was deriving out of that and the Hunter contract.

Q. I see; you talked about “bonusing us” did you say, or did he talk about bonusing you?

A. Bonusing us.

Q. So you didn’t say for Allen to go to Horning and see about the 50,000 shares that you thought you were entitled to?

A. At no time did I ever think in the terms of 50,000 shares. We did have a discussion that we felt the Friday should, and the reason that Mr. Allen would be entitled to some of that stock was that he was very active in setting up that entire deal, both on behalf of the Hunter and on behalf of the Friday Extension——

Q. That’s right.

A. ——and it is true that I gave away stock in the Big Friday in the hopes of getting it—raising money.

Q. Isn’t it a fact that either Horning or Horning through Allen told you that he wouldn’t give you any stock in the Big Friday?

A. I think he told me that through Allen.

(Testimony of Francis Clayton Keane.)

Q. Allen came back and told you Horning said he wouldn't give [748] you any?

A. Well, now, that wouldn't be what he'd say. He would say under the circumstances that Horning refuses to give us any stock.

Q. You recall that's the way he said it to you?

A. Well, he wouldn't come back to me and say "He refuses to give you any stock" because we were both in it. Whatever one got the other got.

Q. I see; and that was true of Hunter, of course, too, that Mr. Allen was representing?

A. Definitely on the Hunter he was supposed to receive 100,000 shares, and then another 200,000 shares of Hunter which was to be split six ways.

Q. Well, now, isn't it true as a matter of fact that Mr. Sekulic and those people originated the idea of the Lucky Friday Extension, and not you or Mr. Allen?

A. Mr. Sekulic would not have the imagination to originate anything.

Q. But——

A. The deal was originated up at Sekulic's home, and to that part, to that extent, he participated in the origination of the idea.

Q. Well, hadn't you and Mr. Sekulic at a time prior to—now just a minute—at a time prior to this deal you're talking about, hadn't you both, that is, you and Sekulic, gone to [749] the Golconda and got them to put money into the Big Friday?

(Testimony of Francis Clayton Keane.)

A. Oh, definitely I had done that a long time prior thereto.

Q. And didn't Mr. Sekulic?

A. No, not until I finally made a deal with them, but I originated the idea of the Golconda investing in the Friday.

Q. And Mr. Sekulic was with you there?

A. No—he was with me, probably, in connection with negotiations.

Q. Isn't it a fact that Sekulic right now is a director of the Golconda, along with the Big Friday?

A. Yes, recently, and a very small interest in it, practically nil.

Q. And how many shares did you and Mr. Sekulic agree to give the Golconda for investing in the Big Friday?

A. I've forgotten the transaction.

Q. Well, isn't it a fact that you and Sekulic saw to it that Judge Featherstone was given around 100,000 shares?

A. No, I didn't see to it, and the transaction between the Golconda, the Featherstones and the Friday, outside of the fact that I originated it, was handled entirely by Horning. Sekulic did what Horning told him to do, and Horning was the master.

Q. Horning was the master?

A. Horning was the master.

Q. And isn't it a fact that after this first contract was [750] signed, that Allen was—you talked

(Testimony of Francis Clayton Keane.)

with Allen about this contract, and he was the man that said that the Big Friday was taking everybody for a cleaning?

A. Now, let me—will you give me that question again, once more, please, until I get sure that I understand it?

The Court: You may read that, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

A. No, I don't believe we ever had such a conversation,——

Q. Well, do you recall Allen——

A. ——save and except as an incident to our attempt to be bonused with Friday stock. Now, we might have had something—we both knew and had discussed that the Friday was getting the lion's share out of that deal. By the same token, equally it was very beneficial to the other two companies.

Q. It was likewise beneficial not only to the Big Friday but to their board of directors, wasn't it, that contract?

A. If the deal had of worked out it probably would have been advantageous to the board of directors.

Q. Yes. Now, isn't it true that as a result of Allen's efforts a supplemental contract was drawn between the Lucky Friday Extension and the Big Friday?

A. I would have to see it to recall the incidents

(Testimony of Francis Clayton Keane.)

or recall the facts in connection with it. You'd better give me the other one, too, Mr. Etter. [751]

(Whereupon, supplemental agreement between Lucky Friday and Lucky Friday Extension was marked Defendant's Exhibit "O" for identification.)

Mr. Etter: Mr. Keane desires a little time to examine it, so we'll wait until the recess, and I'll continue with some other questions.

Q. (By Mr. Etter): Do you recall that Mr. Allen suggested that that provision of the contract having to do with the retaining by Big Friday of any machinery or equipment bought with money advanced by Lucky Friday Extension be deleted from the contract?

A. Oh, definitely; there was discussion about it, and Mr. Allen was insistent that it go out. I recall that.

Q. Mr. Allen insisted that if Lucky Friday Extension under this original agreement had to pay for the machinery, they should finally acquire title to it?

A. That is correct, yes, that was discussed.

Q. And that's when Mr. Allen entered into this proceeding? A. No.

Q. Well, then, how come, Mr. Keane, that it wasn't in the first contract, if Mr. Allen negotiated that?

A. I can't answer that. Now, as I say, I don't

(Testimony of Francis Clayton Keane.)

wish to be examined with reference to those contracts until I've had an opportunity to read them.

Q. All right. Now, do you recall that within sixty days [752] possibly after the organization of Lucky Friday Extension you gave Allen some 25,000 shares of your attorney's stock? A. No.

Q. Well, do you recall that anybody did give him any of your attorney's stock?

A. Well, as I explained here yesterday, all of that attorney's stock of Friday, all of the attorney's stock was thrown into the common pot.

Q. I see.

A. It's owned by Allen and myself.

Q. I see.

A. Now, on one occasion I do recall there was 300,000 shares of it delivered to Mr. Allen over in Pat's Place by Mrs. Vermillion, or at least that's what she said.

Q. You weren't there?

A. And I think Elmer Johnston was present when that was delivered.

Q. You weren't there, of course?

A. Yes, I said that I was there.

Q. Well, do you recall that sometime prior to the organization of the Lucky Friday Extension you had talked with Mr. Allen about acquiring the Baumgartner stock that was owned by the Delaware, or had been acquired by the Delaware?

A. Mr. Allen—we had discussion. I would want to see the date that that stock was escrowed by Mrs.

(Testimony of Francis Clayton Keane.)

Baumgartner in [753] the Idaho First National Bank before I would specify the date.

Q. Well, I don't mean the date.

A. The negotiations with reference to that were carried on between Mr. Allen and Mrs. Baumgartner.

Q. And then didn't you and Mr. Allen carry on your negotiations about you acquiring it so that you would have an interest in Delaware?

A. No. I had an interest in Delaware prior to that time.

Q. What interest did you have?

A. I had fifty per cent of Mr. Allen's holdings.

Q. You had fifty per cent of Mr. Allen's holdings?

A. That is correct.

Q. How did you acquire that?

A. Well, by various dealings, without specifying, he turned over to me fifty per cent of what he owned in it.

The Court: Which company is this?

A. Delaware Company.

Q. And the stock was issued in your name?

A. No. As I told you a little while ago, all of Mr. Allen's stock was left up in this black bag, it was a semi-canvas bag, or some material, it wasn't a leather bag, and it was in my safe, left there.

Q. And what you're telling us now is that you by arrangement or agreement with Allen had a one half undivided interest, [754] so-called, in that stock?

(Testimony of Francis Clayton Keane.)

A. In all of our transactions we were equal partners in everything.

Q. I see. A. That is correct.

Q. When did you make that arrangement?

A. Oh, that was made from time to time as we went along, as specific transactions——

Q. Well, I mean, when did that start, this partnership arrangement where each of you were going to have half of everything?

A. I would judge sometime late in the fall of '43.

Q. Late in the fall of '43? A. Yes.

Q. What you're saying now is that you and Allen entered upon an agreement that thenceforth one half of yours was his, and half of his was yours?

A. That is correct, and from the sale of stock——

Q. Was that of all your worldly goods, Mr. Keane?

A. Just a moment, until I finish answering. I sold—I had various stocks, all of which I sold during that period of time for the purpose of covering overdrafts. I threw everything, all of my Friday and some Yakima-Shoshone, and some other stocks that I had into the common pool.

Q. Now, do you remember in the fall, was it, or sometime in [755] 1947 when Mr. Allen and I think Mr. Grismer——

* * *

(Whereupon, at 12:15 o'clock p.m. the Court took a recess in this cause until 1:45 o'clock p.m.)

(Testimony of Francis Clayton Keane.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

* * *

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

Cross-Examination of Mr. Keane
(Continued)

By Mr. Etter:

Q. Directing your attention, Mr. Keane, as closely as we can, to the early part of 1947, in and about the months of [759] February or March, maybe the latter part of January, do you recall a conversation or discussion had in your office at which you, Mr. McCann, Mrs. Vermillion, Mr. Allen, and Mr. Grismer were present?

A. I don't.

The Court: Who were these, now? The witness; Mr. McCann; Mr. Allen; Mrs. Vermillion; who was the other one?

Q. Mr. Grismer. You cannot recall such a conversation?

A. No. I might recall it if you tell me what the conversation was about.

Q. All right. Do you recall a conversation at

(Testimony of Francis Clayton Keane.)

which those people were present, and possibly one or two who I haven't mentioned, I don't know, where the question of a demand for the resignation of you and Mrs. Vermillion was discussed?

A. No. There was discussions between Allen and I with reference to my resignation, if I was an officer of one of those companies prior to that; that would be in the early fall of '46.

Q. You might have had a discussion about it at that time? A. He and I.

Q. Well, do you recall that at this meeting, at the end of the meeting to which I've referred in the early part of 1947, that you and Mrs. Vermillion and Mr. Evans handed your signed resignations as officers of the Pilot? [760]

A. I don't recall it.

Q. You don't recall that; do you recall that at any time in 1947 you resigned as an officer in the Pilot Silver Mines? A. I might have.

Q. You might have?

A. Yes. I have no independent recollection of it.

(Whereupon, Waiver of notice of meeting was marked Defendant's Exhibit P for identification.)

Q. In hand you Defendant's Exhibit for identification "P", and ask you if you recognize that, Mr. Keane?

A. That's my signature, it's Mrs. Vermillion's signature, and Evans' signature.

(Testimony of Francis Clayton Keane.)

Q. And what is that instrument?

A. It's a waiver of notice of a meeting.

Q. Do you recall signing your name?

A. I do not. I have no independent recollection, but it is my signature.

Q. It is your signature?

A. Definitely so, yes.

(Whereupon, resignation of Keane from Pilot Company was marked Defendant's Exhibit Q for identification.)

Q. Handing you Defendant's Q for identification, I'll ask if you recognize that?

A. I knew that I had resigned, but the date of it, I have no [761] recollection. That is my signature and it is a resignation. Now, whether it was signed that date——

Q. What is the date of that?

A. The 21st day of February, 1947.

Q. Does that refresh your memory at all as to the events that transpired at that time?

A. It does not.

Q. It does not? A. No.

Q. Well, as a matter of fact, isn't this true, Mr. Keane, that Mr. Allen and Mr. Grismer made demand upon you in the presence of the people who I named, to resign as the president, I believe it was, of Pilot Silver Mines?

A. I do not believe that occurred. I might add that I do not recall of ever having had a conversa-

(Testimony of Francis Clayton Keane.)

tion with Allen subsequent to the one that I detailed that occurred down at my residence late in or sometime during the month of November or early in December of '46.

Q. Of '46? A. Yes.

(Whereupon, resignation of Irene Vermillion from Pilot Company was marked Defendant's Exhibit R for identification.)

Q. Handing you Defendant's "R" for identification, I'll ask you if you recognize that? [762]

A. It's Irene Vermillion's signature to a resignation dated the 21st day of February, 1947.

Q. Do you remember the events that transpired on this date when she resigned? A. I do not.

(Whereupon, resignation of Glynn Evans from Pilot Company was marked Defendant's Exhibit S for identification.)

Q. Handing you Defendant's "S" for identification, I'll ask you if you recognize that?

A. I recognize the signature as being that of Glynn D. Evans.

Q. And do you know what it represents?

A. It represents a resignation dated the 21st day of February, 1947.

Q. So you have no independent recollection, then, Mr. Keane, either of the waiver of notice of meeting or of the resignations of yourself, Mrs. Vermillion and Glynn D. Evans, though they all are dated on the 21st day of February, 1947?

(Testimony of Francis Clayton Keane.)

A. I stated that I have no independent recollection of the resignations. I did know, and know now, that we all resigned.

Q. Do you know the circumstances under which you resigned? Were they discussed that evening?

A. Not that I recall. [763]

Q. As a matter of fact, didn't you say at this meeting "Don't do anything for a couple of months, until I can straighten out my books"?

A. No, I did not, not that I can recall.

Q. Not that you recall? A. No.

Q. Would you testify now, Mr. Keane, that you did not say that?

A. I don't believe that I said that.

Q. You don't believe that you said that?

A. That's right.

Q. Well, then, do you recall any circumstances of the reason for your resignation?

A. I do not recall the circumstances. I know that it was determined that we were going to move out of it.

Q. Who determined that?

A. Well, I presume that I did.

Q. You presume that you did?

A. I don't know. I probably had a discussion with McCann with reference to it.

Q. McCann was there, was he not?

A. He was in Wallace at the time.

Q. He was your general law partner?

A. He was my partner.

(Testimony of Francis Clayton Keane.)

Q. He was at the meeting? [764]

A. Well, I don't know that he was at the meeting. I say that I have no recollection of the meeting.

Q. At that time, Mr. Keane, on that date, did you make any claim in the presence of any of these people that Allen was a partner of yours?

A. I certainly cannot answer whether I did or did not if I have no recollection of the meeting.

Q. You have no recollection of the meeting?

A. That's right.

Q. So you haven't any recollection of anything?

A. At that particular time, that's right. Might I have the last question that was propounded to me read again, please?

The Court: You may read it, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

A. The question preceding that, please.

(Whereupon, the reporter read the question as follows: "You have no recollection of the meeting?"')

A. All right; the answer stands.

Q. Now at this time, Mr. Keane, I'm going to hand you Defendant's Exhibit J, and ask you if you remember when those minutes were composed?

A. I couldn't tell you.

Q. Isn't the fact of the matter, Mr. Keane—they bear what date? [765]

A. They bear date June 29, 1943.

(Testimony of Francis Clayton Keane.)

Q. Now as a matter of fact isn't it the truth, Mr. Keane, that these minutes were drawn by you sometime in the year 1947?

A. I would have no way of knowing when they were prepared.

Q. You wouldn't have any way; you have no independent recollection of ever preparing these minutes?

A. No, that is correct.

Q. Well, now, these minutes state "The president stated"—and that was you?

A. Yes.

Q. "The president stated that the Montana Leasing Company had employed Mr. Arthur Lakes to make an examination of the property under lease from Benton Mining Co. and the Snowstorm group of claims, located in Cascade County, Montana, that said examination had been made and that Mr. Lakes had recommended the prospects incident to said work being carried on by the Montana Leasing Company in the highest terms and had stated that, in his opinion, the continuation of the work would result in the securing of a substantial ore body." June, 1943. Do you have any independent recollection of making that statement to the meeting of the board of directors on that date?

A. No, I do not.

Q. Do you have any independent recollection of making that [766] statement to the board of directors of Independence at any time?

A. I don't know whether I did or not.

Q. But you did sign those minutes?

(Testimony of Francis Clayton Keane.)

A. I signed those minutes.

Q. Isn't it a fact that the first time you ever personally met Mr. Lakes was in the late fall of 1943?

A. No.

Q. When did you first meet Mr. Lakes?

A. I've forgotten exactly when. I could go back into some records which I have and probably determine it.

Q. Isn't it a fact, Mr. Keane, that Mr. Lakes never made an examination of the Benton property or the Montana Leasing property or any of the property you mention here, that he never made any examination of that property until the late fall of 1943?

A. I couldn't say; he was over there so frequently he was practically on our payroll steadily.

Q. Yes, but isn't the first time he came over in the fall?

A. I say I have no independent recollection of that; I would have to consult our record, or what record we have. It would mostly be checks.

Q. Do you recall that it was in July of 1944 that Mr. Lakes made an examination of that property?

A. I would have to, as I say, consult checks or look at [767] checks that were paid to Mr. Lakes to find out when and under what circumstances he was first employed by us.

Q. All right; then just assuming that Mr. Lakes

(Testimony of Francis Clayton Keane.)

went over there in July of 1944 for the first time, these minutes would be in error, would they not?

A. Necessarily would have to be, if that were a fact.

Q. Now do you recall, Mr. Keane, when these minutes were composed?

A. I stated that I did not know when they were dictated.

Q. When they were dictated?

A. That's right.

Q. Do you remember when you signed them?

A. No, I do not. They were not dictated and they were not signed on the date they bear. Now, I appreciate that, I know that.

Q. Now isn't it a fact that these minutes were drawn, along with numerous other minutes, were drawn late in 1947 and after you had been subpoenaed to appear before the S.E.C.?

A. I don't believe that I was subpoenaed in 1947.

Q. Well, when were you?

A. It might have been possibly in the fall of '46, or sometime in '46.

Q. Yes, and at that time isn't it true that an investigation was being made by the S.E.C. into the affairs of the Independence? [768]

A. That is correct.

Mr. Stocking: We'll object to that question as immaterial.

The Court: Overruled.

Q. Isn't that so?

A. That is correct.

(Testimony of Francis Clayton Keane.)

Q. And pursuant to that investigation didn't you have these minutes drawn and dictated in 1947?

A. I question whether or not I was competent at any time during the year 1947 to draw any minutes or do anything else.

Q. And isn't it the fact that—well, Mr. Keane, was there any time that you can recall between the fall of 1946 and say, June of 1947, when you were competent?

A. Well, it would be at very slight intervals.

The Court: From when, was that date?

A. From the fall of 1946 until June of 1947.

Q. From the fall of 1946 until June of 1947?

A. That would be right, yes.

Q. There were very few intervals?

A. That's right.

Q. You, however, in June of 1947, did you become fairly competent in June of 1947?

A. Not too competent.

Q. Not too competent? [769] A. No.

Q. Well, let's go a little farther; in July of 1947?

A. Probably a little worse.

Q. A little worse, or a little better?

A. A little worse than I had theretofore.

Q. And was this a matter of drinking at that time? A. Absolutely.

Q. It was? A. Yes.

Q. Did you not in June of 1947 cause a complaint to be filed in the District Court of the First Judicial District of the State of Idaho in and for the County

(Testimony of Francis Clayton Keane.)

of Shoshone, No. 10224, of the official files and records of said court, in which F. C. Keane was the plaintiff and in which J. A. Allen, Montana Leasing Company, a Montana Corporation, Grismer, Lexington Silver Lead Mines, and others were defendants? A. That was filed, yes.

Q. And did you not at that time verify that complaint? A. I did.

Q. And at that time wasn't that in about June of 1947?

A. It possibly was in June of 1947, yes.

Q. And that complaint was a lengthy complaint comprising 17 or 18 pages?

A. I didn't prepare that complaint. [770]

Q. You didn't prepare it?

A. No, and aided to only the slightest extent in the preparation of it.

Q. You didn't have anything to do with it?

A. I knew that it was being done, in a general way.

Q. Did you supply the information that appears in here?

A. Very little of it. I was incompetent at the time.

Q. That complaint was the first allegation you had ever made of a partnership with Allen, isn't it?

A. Absolutely not.

Q. Now——

A. Now let me answer that in full, if I may.

Q. All right.

(Testimony of Francis Clayton Keane.)

A. In June of 1944 I filed in the office of the Collector of Internal Revenue at Helena, Montana, a corporation return for the Montana Leasing Company which return was up to October 5 of 1943, and from that date on a partnership return for Keane and Allen, which was the way it was prepared and was submitted to the Collector sometime in June of '44, after numerous extensions had been given us.

Q. That was an information return you made yourself?

A. I made it on behalf of the Montana Leasing Company, first as a corporation, and after, for the operations after the 5th of October, it was signed as a partnership.

Q. You never showed that to Mr. Allen, did you?

A. Absolutely; Mr. Allen was given copies of them.

Q. I see.

A. And each succeeding year until '46, when I no longer had the records, I made similar returns, or had Mr. Randall make the returns, I should say.

Q. Now, isn't it a fact that you had the records in 1946?

A. I did not. I had some of them. Mr. Allen had the records for the last month's operation.

Q. But you had them up until then?

A. That would be correct.

Q. You turned them over to the commission?

A. That's right.

(Testimony of Francis Clayton Keane.)

Q. Now, isn't it a fact that your purpose in filing that second return you're speaking about was to be able to take the losses on your borrowing from Independence and charge them off against your personal account?

A. I don't follow your question.

Q. Well, was it the purpose?

A. Read that question.

(Whereupon, the reporter read the question commencing with, "Now, isn't it a fact that your purpose.")

A. That's not right.

Q. That wasn't the purpose? A. No.

Q. Now, this information that appears in this lawsuit you [772] filed, you say that you didn't—did you get that information together?

A. I said I did not.

Q. Who did get it together?

A. Mr. Langroise, he's an attorney at Boise, Idaho; Mrs. Vermillion, and Mr. McCann. Mr. Sullivan dug it out.

Q. Now, isn't it true that sometime prior to the time this lawsuit was filed that you and Mr. Langroise both requested Allen to go into a partnership arrangement with you on these things?

A. No.

Q. Were you ever present—— A. No.

Q. ——do you recall that you were present when Mr. Langroise stated to you and to Mr. Allen that he could beat this thing if it was a partnership?

(Testimony of Francis Clayton Keane.)

A. Beat what thing?

Q. Beat this investigation that was coming to you, with the Commission? A. On what?

Q. Well, did he say that?

A. No. The investigation had been completed at that time, of the Independence.

Q. Had you said anything during the investigation and up until the time that you executed this note, that Mr. Allen [773] was a partner of yours?

A. Had I what?

Q. Had you told any person?

A. Oh, it was common knowledge. I was introduced a hundred times by Mr. Allen as his partner.

Q. Now, isn't it a fact that this partnership affair you're claiming now is for the purpose of covering up the signing of Allen's name on this document?

A. Let me see that for just a second again, will you? I want the date of it. As I stated a moment ago, in June, the 14th, I think it is, I filed an income tax with the Collector. I've got a copy, together with a copy of the letter that accompanied it, if you wish to see it, in which I stated that the corporation had ceased doing business on October 5, 1943, and then we equally made and filed, or I had made and filed, an income tax return of the partnership affairs from and after that date, and the change from the corporation to the partnership was at Mr. Randall's suggestion, for tax purposes.

Q. Now we'll go back: Do you recall that when

(Testimony of Francis Clayton Keane.)

you and Mr. Randall were in the city of Spokane in the early part of February to testify before the Securities and Exchange Commission, that you called Mrs. Randall from your hotel room? Do you recall that?

A. I don't recall having called Mrs. Randall.

Q. Do you recall that Mrs. Randall called you and talked with you? A. No, I do not.

Q. You don't recall that?

A. I wouldn't recall it. She might have.

Q. Do you recall whether or not Mrs. Randall told you that Mr. Randall had just testified, and that he was under obligation to keep his testimony secret? A. No, I don't recall that.

Q. You don't recall that? A. No.

Q. I think during your direct testimony, Mr. Keane, you stated that there was some arrangement to divide up Hunter Creek stock at the time of the negotiation of Lucky Friday Extension, Big Friday, and Hunter Creek; I think you stated that it was to be divided up six ways?

A. That's right.

Q. Will you tell us what that arrangement was, that six ways that you discussed?

A. Mr. Allen was to receive one-sixth, I was to have one-sixth; the remaining two-thirds were to be divided among the four other directors of the Big Friday.

Q. And name those four directors.

A. I think it was Emacio at that time, Horning,

(Testimony of Francis Clayton Keane.)

Sekulic, and Featherstone, Judge Featherstone.

Q. Now, during the course of your examination, direct examination, Mr. Keane, yesterday, you identified a great number of exhibits? A. Yes.

Q. Is that correct? A. Yes.

Q. Possibly 30 or 35, or more?

A. Might have, yes; I don't know.

Q. And you identified those exhibits, and do you recall as a matter of independent recollection the fact that those exhibits were all known to you?

A. I don't follow you.

Q. At the time of their execution, if they were checks or other documents——

A. I'm not following the question, please. Read it, will you please, Mr. Reporter?

(Whereupon, the reporter read the question commencing "And you identified those exhibits")

A. No.

Q. You don't? A. No.

Q. How is it that you were able to identify them?

A. They were records in my office.

Q. They were records in your office.

A. Yes. [776]

Q. But you don't have any independent recollection of any of them?

A. Oh, some of them necessarily, yes.

Q. But not all of them you identified?

A. No.

(Testimony of Francis Clayton Keane.)

Q. You merely identified them because you were told that they were from your office?

A. I wasn't told they were from my office. They were matters that I recognized and had seen prior to the time that I personally delivered them to Mr. Denney.

Q. I see. In your direct examination you stated the other day that in organization of the Lucky Friday Extension you discussed with Allen the capital stock and the price and the price of each share, who the officers of the company would be after it was incorporated?

A. That is correct.

Q. When did you discuss that with Allen?

A. Prior to the time it was incorporated.

Q. You have an independent recollection of that discussion? A. I think that I do, yes.

The Court: What corporation is this?

Q. Lucky Friday Extension. You have an independent recollection?

A. I would say that I have, yes.

Q. And the question was asked of you-as to the Lucky Friday [777] prospectus, and it indicated that 500,000 shares were to be taken as attorneys' stock for Elmer Johnston and F. C. Keane, and that 1,229,700 shares had been issued for mining claims and real estate to Mr. Grismer, and you stated that Mr. Allen and you made those arrangements?

A. Mr. Allen actually made the arrangements with Mr. Grismer.

(Testimony of Francis Clayton Keane.)

Q. You have an independent recollection of that?

A. I know that he did, yes.

Q. I see.

A. At least he told me that he did, and it was understood all of the time between us. We had discussed it, that if there was any handling of Joe to be done, Allen was going to do it.

Q. You have an independent recollection of that?

A. Oh, it was discussed with us many times.

Q. Many times? A. Yes.

Q. You also stated that of the 1,229,700 shares Mr. Grismer was to receive 100,000 shares, and the balance belonged to you and Allen, subject to certain commitments? A. That is correct.

Q. Do you have an independent recollection of taking with Mr. Allen about that?

A. Oh, definitely, yes, it was discussed.

Q. And you likewise have an independent recollection of you [778] and Mr. Allen discussing with Mrs. Vermillion the matter of signing checks in both of your respective names—or in your name, rather? A. I think that's correct.

Q. And you have an independent recollection that you and Mr. Allen both instructed her on that account? A. That's right.

Q. In the money or any of the funds that you received, Mr. Keane, from the sale of your attorney's stock, did you ever give Allen a check for any particular portion of it?

A. I didn't sell any of my attorney's stock.

(Testimony of Francis Clayton Keane.)

Q. Well, did you receive any funds for it?

A. Well, there were some funds turned back into the Montana Leasing Company, that's right, yes.

Q. But did you ever give Mr. Allen any portion of the funds? Did you write out a check to James Allen and tell him that "Here's half of it?"

A. I might explain to you, there was Emacio and McFee and one or two others originally agreed to put in five hundred or a thousand dollars apiece into the Friday. Now, I think that money aggregated two thousand dollars. In addition to that, there was \$2,000 worth of stock went to Moscow, Idaho; it went to Courter, Clyde Marsh, and Howard Short. The proceeds from that \$5,000 was turned over to me and deposited either in my personal account or in the Montana [779] Leasing Company account. Now, if they were transferred in my own account, deposited to my own account, they were later transferred.

Q. That's right, but did you ever give Mr. Allen any money personally?

A. Mr. Allen was away ahead all the time, Mr. Etter.

Q. I would like you to answer the question, Mr. Keane. Did you ever give Mr. Allen——

A. Well, definitely, I didn't, no. He had the money; I didn't.

Q. Now, do you have an independent recollection of the first meeting in Pat's Cafe, or whatever it

(Testimony of Francis Clayton Keane.)

was, when the matter of incorporating or organizing the Lucky Friday Extension——

A. I don't believe that it was held there at all. I don't believe that Joe Grismer was ever present when I was present and the matter was discussed. I think Mr. Allen and Mr. Grismer did discuss it in my absence.

Q. You never discussed it with anyone in Pat's Cafe?

A. It's possible. I've been in Pat's Cafe a few times, not very often.

Q. But you have no recollection of that particular instance?

A. If you would say it was the Metals Club, I probably discussed it with a lot of people there.

Q. All right, do you recall a discussion in the Metals Club with regard to the organization of the Lucky Friday [780] Extension?

A. I do not. I think the discussion with reference to that organization was had by Mr. Allen and myself upstairs in his room.

Q. You don't remember any meeting in Pat's Cafe or in the Metals Club?

A. We had numerous meetings, if they could be called meetings, in the Metals Club.

Q. Yes, but do you remember discussing this matter in the Metals Club with Allen and Horning and Sekulic and Mr. Ted Halin and other people?

A. It might have been discussed there, yes.

Q. You don't have a recollection of it?

(Testimony of Francis Clayton Keane.)

A. Oh, just as a person would remember that you had eaten a week ago, or two weeks ago, but what you ate you wouldn't recall. It was a common occurrence for us to stand around and talk mining problems and so forth daily.

Q. Now, you stated in your testimony that you don't recall that you ever met Mrs. Phelan?

A. I didn't so testify, Mr. Etter. I said that I met her on one occasion.

Q. Oh, once, yes. A. That's right.

Q. That was when you gave her a check?

A. I don't believe—I wouldn't say for certain; it's quite [781] probable that Mrs. Vermillion wrote that check.

Q. I see. On your account?

A. On my account, yes.

Q. Do you remember that incident?

A. I remember of meeting her, yes.

Q. Do you remember the check being written for her?

A. I would have to see the check to determine whether I signed it. I knew the check was going to be delivered to her, but who wrote it, whether Mrs. Vermillion wrote it or I did, I couldn't answer.

Q. Now, do you remember meeting a gentleman by the name of Mr. Herrick?

A. Doc Herrick? Oh, I've known him all my life, that is, all the time I've been in Wallace.

Q. Did you have any discussion with Herrick about the acquisition of the Cincinnati group?

(Testimony of Francis Clayton Keane.)

A. Not until I was advised by Mr. Allen to give him a check for \$5,000.

Q. And that's what you did?

A. That's what I did. That's the first time I discussed it with Mr. Herrick.

Q. And you recall that very well?

A. Well, I recall that I paid him \$5,000, yes.

Q. Referring back, Mr. Keane, to Plaintiff's Exhibit 39, do you recall a discussion in Mr. Horning's office that was [782] attended by you and Mr. Allen and Mr.—you and Mr. Horning and Mr. Allen, do you recall any discussion a day or so prior to the execution of this agreement to which this check is attached?

A. We might have had a conversation with reference to Mr. Horning's employment for the purpose of preparing contracts incident or as between the various parties that were interested in that.

Q. And Mr. Horning was employed, was he not, for that purpose?

A. He was employed for that purpose, at my suggestion.

Q. And of necessity there was required a \$25,000 check, isn't that right? A. That is right.

Q. And do you recall whether or not Mr. Allen gave Mr. Horning his personal check for \$25,000?

A. That's hearsay—no, it is not—Mr. Allen advised me that he had given him a check for \$25,000, and complimented Mr. Horning on the fact, or spoke highly of Mr. Horning, for the reason that

(Testimony of Francis Clayton Keane.)

Mr. Horning says, "Allen's given me that money, and I've got it."

Q. And do you recall at that time Mr. Horning said, "Well, if he hasn't got it I'll go around the corner and get it myself to put up on this deal?"

A. Well, I think that's right. [783]

Q. And isn't it a fact you said, "There's no necessity for that; I can get the money, too"?

A. No, absolutely not.

Q. You didn't say that? A. No.

Q. And do you recall that you went down to the bank and came back up to Mr. Horning's office with a deposit slip?

A. I didn't; I came back to the Metals Club with a deposit slip.

Q. All right, when you came back with the slip wasn't Mr. Allen and Mr. Horning together?

A. They were.

Q. Didn't you show the slip to Mr. Horning?

A. I turned it over to Mr. Allen, and he said he wasn't satisfied with it, he wanted a cashier's check.

Q. Was it Mr. Horning or Mr. Allen that wasn't satisfied? A. Allen.

Q. Is it true Mr. Horning took his pen and scratched out these two words "certified check"?

A. Not in my presence.

Q. Mr. Horning didn't say that or do that?

A. That was not done in my presence, or at least I have no recollection of it if it was.

(Testimony of Francis Clayton Keane.)

Q. Do you recall testifying yesterday, Mr. Keane, that you paid ten thousand dollars and some odd cents, I think it [784] was, to Mr. Horning for legal services in connection with some litigation of the Independence, which you got out of Pilot?

A. That is correct.

Q. That is correct; now, what was your physical condition at that time?

A. It wasn't too good, but it wasn't as bad as it got later.

Q. It wasn't as bad as it got later. Now, Mr. McCann at that time was your general law partner, was he not?

A. I think he returned from the Army sometime in the——

Q. April, was it not?

A. ——the spring of '46.

Q. Sometime in April, probably?

A. I wouldn't fix the month.

Q. And it was about in June, was it not, that you took this \$10,000 from Pilot and paid it to Mr. Horning and Mr. McCann?

A. Mr. McCann did not share in that.

Q. Was he employed at that time?

A. If he did, if he was, he received no compensation.

Q. What was done, then, with that \$10,000?

A. I imagine if Mr. Horning hasn't spent it he still has it.

Q. He still has it?

(Testimony of Francis Clayton Keane.)

A. Well, he may have spent it. It was his money. There was no kick-back to anybody on it. [785]

Q. But it was paid to Mr. Horning, was it?

A. That's right.

Q. And was any of it paid to Mr. McCann?

A. Not that I ever heard of.

Q. I see.

A. I don't believe Mr. McCann received any money for his services incident to that.

Q. The Independence Lead Mines Company, however, had authorized the payment of the \$10,000 to both Mr. McCann and Mr. Horning, had they not?

A. Not that I remember of.

Q. Now, at that time that you paid the \$10,000 to Mr. Horning, that was in settlement of some litigation in which the Independence was involved?

A. That was in settlement of his fee for services rendered in connection with the settlement, yes.

Q. With the settlement? A. That's right.

Q. And did you tell Mr. Horning where you were getting that money? A. No.

Q. Did Mr. McCann know where you were getting it?

A. Mr. McCann had nothing whatever to do with——

Q. No, I'm just asking you, he wouldn't know where you got it? [786]

A. How would he know?

Q. Did you tell him?

(Testimony of Francis Clayton Keane.)

A. There was no necessity to tell him. I don't recall that I did.

Q. Was Mr. Allen there at the time?

A. Mr. Allen knew of it.

Q. How did he know it?

A. We had discussed it before.

Q. Where did you discuss it?

A. I couldn't fix the time nor the place. A lot of our conversations were carried on in his room.

Q. I see.

A. Some more of them were carried on at the bar.

Q. But you have an independent recollection of such a conversation? A. Yes.

Q. Now, was there any other money that you paid to Independence that you took from Pilot at that time?

A. Not that I—there might have been; I don't know; I'd have to see the records on it.

Q. I see. Is there any way, Mr. Keane, that you have of telling us, any standard that you know of, by which you know now that at certain particular times you were all right to do business, and at other times you weren't? Can you tell us now how you happened to know, or knew? [787]

A. Well, if I didn't remember what had occurred, the next morning, I figured I was not in shape. .

Q. But all these things that you've testified to as a witness for the government, you remember all those?

(Testimony of Francis Clayton Keane.)

A. If they weren't qualified I do remember them, and remembered them.

Q. But your statement is correct on numerous questions I've asked, that you don't remember?

A. Well, if I don't remember I've told you that I don't recall.

Q. Do you recall being personally present in this courtroom on December 8 of 1948?

A. I imagine I was in here, yes.

Q. Present at that time with your counsel?

A. Yes, I think that I was, if that's the correct date; I'm assuming it is, Mr. Etter, the date that I plead nolo contendere.

Q. Yes. A. Yes, I was present.

Q. And do you recall that during that hearing it was stated in part by one of your counsel: "In the second place, his counsel believe from information which they think is reliable, that the physical condition of Mr. Keane at the time of the commission of the alleged offense was such as to raise some doubt in the mind of counsel as to whether [788] or not he was in a physical and mental condition where he could entertain the necessary intent, which is an element of the offense here charged, and for the further reason that his physical condition was such as to make it impossible for him to resist certain demands and suggestions made by others who we believe controlled his actions"?

A. I heard that statement made, yes.

Q. And do you recall that this statement was

(Testimony of Francis Clayton Keane.)

likewise made: "I would like just to very briefly touch upon the physical condition of the defendant Keane, coming along in the early part of 1940. He was not attending to his practice of law. He was during that period using liquor excessively, and in various times which I saw him throughout that period, I found him not able to intelligently and in some instances to at all discuss any matter with any degree of continuity or reason. This condition continued along on and on until in the end of—or even into 1947."

A. I believe I heard that statement made, yes.

Q. And did you hear the statement made: "Keane was continuing his drinking and was in substantially the same condition which I have described; he had no way of being able to do anything"?

A. That might have been made; I don't particularly recall that.

Q. And do you remember that he said in part: "We were able to [789] get Mr. Keane in the condition where we could talk to him, we found these facts, and Keane immediately then started to pursue a course of trying to secure for the benefit of these companies and the creditors of this partnership any assets which the partnership had."

A. I heard that statement made, yes.

Q. And you say that that statement you think is a true statement, Mr. Keane?

A. It might have been embellished somewhat.

Q. It might have been embellished somewhat?

(Testimony of Francis Clayton Keane.)

A. Yes.

Q. Do you know what the purpose of the embellishment was at that time?

Mr. Stocking: We'll object to that.

The Court: How is that proper here, what someone else said?

Mr. Emigh: Bearing out the credibility of the witness.

Mr. Etter: It's a matter of credibility and motive both.

The Court: I don't think that on the stand in this case this witness is bound by what someone else says in the courtroom.

Mr. Etter: Your Honor, it was his counsel, and he was personally present. [790]

The Court: I recognize that, but if every person who had a lawyer was bound by not only what he said, but what his lawyer said, the ordinary individual would be in a terrible predicament.

Mr. Emigh: I believe that's in the nature of a stipulation to the Court, and the Court acted upon it. In my opinion that statement was a stipulation of counsel to the Court for the benefit of the defendant, and was as binding as any other stipulation made to the Court.

The Court: Assuming that he was bound by it, the purpose of this examination is to test his truthfulness, and his truthfulness can't be tested by what someone else said. This all occurred long after the transaction involved and the conspiracy

(Testimony of Francis Clayton Keane.)

existed. It ended on the filing of the indictment, and this appearance in court was after the indictment was filed. It was not a statement by him. If this witness himself made any statement relative to these matters in open court or otherwise contradictory to what he says today, I'll permit it to be shown, but it's a new principle introduced here that this witness can be impeached by what an attorney says, and I'm casting no reflection on an attorney. I mean by that, the ordinary client doesn't usually interrupt his attorney if he thinks his attorney is helpful to him, and I'm satisfied, counsel, that there will come a time in your practice that you'd hate to have some client of yours bound by some statement that had been made by an attorney he had. If I'm mistaken I'd be very happy to have some cases upon this proposition, but to my mind it's so novel you'll find no cases supporting the principle you suggest.

Mr. Etter: Well, I won't make a statement.

The Court: I'll sustain the objection.

Mr. Emigh: Exception, your Honor.

The Court: Allowed.

Mr. Etter: That's all, Mr. Keane.

Redirect Examination

By Mr. Stocking:

Q. Mr. Keane, as a defendant in this case you have not yet been sentenced by the Court?

A. That's correct.

Q. You have no idea at this time what your sentence might be?

A. None whatever.

(Testimony of Francis Clayton Keane.)

Q. Has that ever been discussed with anybody representing the government, as to what your sentence might be?

A. I think that the only person you could discuss it with would be the Court.

Q. And you have never discussed it with the Court?

A. No, most certainly I haven't discussed it with the Court.

Q. Have your attorneys ever discussed it with the Court? A. Not to my knowledge.

Q. What was your condition of your health during the early [792] part of 1947, when you stated you had difficulty in recalling certain transactions?

The Court: Say, just a moment. For the better clarification of the jury I would appreciate, unless counsel, either counsel, have objection, a statement being made as to the identity of the Judge to whom he pleaded, and the identity of the Judge or Court whom he expects will sentence him.

Mr. Stocking: Have the witness make that?

The Court: Yes; I'd be glad to have you do it. Is there any objection?

Mr. Etter: No objection.

Q.(By Mr. Stocking): What Court did you appear before?

A. I plead nolo contendere in front of Judge Driver, and I was present in the courtroom when at the suggestion of the district attorney he retained jurisdiction of the sentencing of myself and Grismer.

(Testimony of Francis Clayton Keane.)

Q. And postponed the sentencing?

A. And postponed the sentence until after the Allen trial.

Q. Now, going back to another question with respect to your statements about your recollection in 1947, what was the condition of your health during the early part of 1947?

A. Well, my nerves were in terrible condition, and I was undernourished, I wasn't eating regularly, I was depending upon whiskey as nourishment, and late in the fall I [793] discovered that it had affected my heart, sclerosis of the liver, and high blood pressure, all of which I am still suffering from.

Q. Did you then place yourself under the care of a physician?

A. Well, I've been under the care of the Virginia Clinic since October or November of 1947, and still am under their care.

Q. You did appear——

A. That hospital is in Seattle.

Q. Yes. You did appear before the representatives of the Securities and Exchange Commission about March of 1947, did you not?

A. I probably did. I've got a hazy recollection of coming in here one time.

Q. And that was in connection with an investigation of the Independence Company——

A. That is right.

Q. ——and its failure to file an annual report as required by law?

A. That's right.

(Testimony of Francis Clayton Keane.)

Q. And the report was in the process of being prepared, or had just been prepared by Mr. Randall about that time, is that correct?

A. Shortly before it, I imagine. I wouldn't attempt to fix any dates. [794]

Q. Have you had a chance to refresh your recollection as to whether or not you ever made any statement that Mr. Allen's name or signature appeared on the partnership note which was exhibited here?

A. I was shown a transcript of the testimony that I gave at that time, during the recess period. It did not appear in there that I had made any statement that that was Mr. Allen's signature.

Q. What is your best recollection as to the statements you made to representatives of the Securities and Exchange Commission?

A. If the question were asked me, I would have answered that I signed Allen's name.

Q. Now, what was the purpose of filing the partnership return——

Mr. Etter: Your Honor, at this time, I think, the witness has just testified, and I didn't want to interrupt, that we have a right to examine the instrument to determine just exactly the whole scope of the examination. They say they've refreshed his recollection with a transcript of the testimony. I think we're entitled to see it.

Mr. Stocking: I don't think they have that right, your Honor; it's a confidential document be-

(Testimony of Francis Clayton Keane.)

tween the witness and the Securities and Exchange Commission.

Mr. Etter: Well, now, it hasn't been confidential so far as the testimony sought to be introduced by the [795] government as a matter of rebuttal.

The Court: That's correct. Counsel, I have some suggestion. We're nearing a recess. It may be that whatever confidential character attached to that testimony has been somewhat dissipated.

Mr. Stocking: Well, he indicated, though, that they wanted access to the whole record.

Mr. Emigh: Whatever he had referred to to refresh his memory.

Mr. Stocking: If he referred to a page of testimony——

The Court: Well, just a moment. I have a suggestion. Counsel suggested in cross-examination of this witness that he testified before the Securities and Exchange Commission that a certain signature was written by Mr. Allen. This witness has contended that it was not written by Mr. Allen, that he wrote both signatures because they were partners, and he contended that if the question were asked him, that he told the truth to the Securities and Exchange Commission to the effect that he had written the signature. Now, if the defendant has the right to look at that testimony, the defendant has a right to search it with respect to that particular item. They can't use that as an excuse for a lot of other inquiries, but I am much inclined to think

(Testimony of Francis Clayton Keane.)

that a system can be devised by which the defense will have the benefit of [796] knowing what his testimony was on that point.

Mr. Stocking: Well, probably we can come to some decision about it, then, during the recess period.

The Court: All right. I tried to suggest that it could go over until recess. You may proceed.

Mr. Stocking: I asked another question there when counsel interposed this statement.

(Whereupon, the reporter read the last previous question.)

A. Now, what was the purpose of filing the partnership return?

Q. What was the purpose of filing the partnership return in Montana Leasing Company and dissolving the corporation?

A. Well, the purpose as it was explained to me was for purposes of taxation.

Q. Now, with whom did you discuss that purpose? A. Mr. Randall and Mr. Allen.

Q. And did you get Mr. Randall's conclusions from an accountant's standpoint? A. Yes.

Q. And he's experienced in tax matters; you relied on him?

A. Well, he's a certified public accountant.

(Whereupon, tax return of Keane and Allen, 1943, was marked Plaintiff's Exhibit No. 93 for identification.)

(Testimony of Francis Clayton Keane.)

(Whereupon, tax return of Montana Leasing Company was marked Plaintiff's Exhibit No. 94 for identification.) [797]

Q. Referring to Plaintiff's 94 for identification, can you identify that, please?

A. That's the final return for the Montana Leasing Company for the calendar year 1943, which was filed with the Collector of Internal Revenue at Helena, Montana.

Q. As what, a corporation, or partnership?

A. As a corporation, and it encloses a letter which shows the—states those facts.

Q. What is the date of that letter?

A. That letter is dated May 13, 1944.

Q. And identify Plaintiff's 93 for identification, please.

A. That's a partnership return of the partnership consisting of Keane and Allen for the year ending December 31, 1943. It doesn't show at which date it started in 1943.

Q. Who prepared these returns?

A. Mr. Randall prepared both of them.

Q. Did Mr. Allen receive copies of these returns?

A. They were made for him, and they're not in the file. I would judge that he had. We did discuss——

Q. This matter was discussed?

A. Between us, yes.

Q. And this is the letter that you had reference to in cross-examination?

A. That's correct.

(Testimony of Francis Clayton Keane.)

Q. And these are the returns that you mentioned? [798]

A. That is correct; these are copies of them.

Q. Yes. These were made at what time, these copies?

A. They were made sometime May or June of 1944. We had gotten extensions.

Q. These copies and the copy of the letter which appears in Exhibit 94, were they all made at the same time that the originals were made?

A. Simultaneously, yes.

Mr. Stocking: We'll offer in evidence 93 and 94 for identification.

Mr. Etter: A few questions on voir dire?

The Court: Surely.

Voir Dire Examination

By Mr. Etter:

Q. Mr. Keane, were you ever present with Mr. Allen when you showed him these returns?

A. I don't know whether I was or whether I was not, I mean that I showed him; we had discussed the matter of those returns.

Q. You don't know whether he ever saw these or not?

A. Well, they were—they must have been delivered to him. The contents of them were discussed with him.

Q. Did you personally mail any of these to him?

A. Personally I did not, no. I would imagine they were delivered to him personally.

(Testimony of Francis Clayton Keane.)

Q. But you don't know. [799]

A. No, I have no independent recollection.

Q. He didn't sign either of them?

A. He signed neither.

Mr. Etter: I think I'll object at this time on the ground no proper foundation has been laid, they're incompetent, irrelevant and immaterial to prove any issue as made against the defendant Allen, and furthermore on the basis of the fact that it appears on the face of the exhibit 93 that the exhibit does not support nor prove any testimony so far adduced by the witness Keane to the effect that the defendants Keane and Allen were operating a partnership under the name of the Montana Leasing Company.

The Court: All right, let me see the two exhibits. Well, it would seem to me that exhibit 93 for identification is admissible. It would not have been admissible except that cross-examination not only suggested but insisted that the first time he had ever claimed to anyone that he and Mr. Allen were partners in anything was by a complaint in 1947. By virtue of that I think that exhibit 93 is admissible for what if anything it is worth.

Mr. Etter: I'd like to add on the objection that the exhibits are, so far as the foundation has been laid by the witness Keane, pure hearsay as far as the defendant Allen is concerned.

The Court: I recognize that, and if it's admitted [800] it's only admitted for the purpose of

(Testimony of Francis Clayton Keane.)

showing that as early as 1944 Mr. Keane at least was contending that there was a partnership between the two of them, and I will overrule the objection as to 93, and admit it.

Mr. Emigh: Exception.

The Court: As to 94, it would seem to me the objection is well taken. Exhibit 93 admitted; objection overruled.

Mr. Etter: Exception.

The Court: Exhibit 94 rejected; objection sustained.

(Whereupon, Plaintiff's Exhibit No. 93 for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit No. 94 for identification was rejected.)

Redirect Examination

(Continued)

By Mr. Stocking:

Q. Mr. Keane, by the summer of 1945, when the Extension Company was organized, what were the——

The Court: Just a moment. The jury will understand that Exhibit 93 is not admitted for the purpose of establishing whether there was or was not a partnership between Mr. Keane and Mr. Allen. It is only admitted for what aid if any it may be to the jury in determining whether 1947 was or was not the first time that Mr. Keane con-

(Testimony of Francis Clayton Keane.)

tended that he and Mr. Allen were partners. The jury will understand that the contention by Mr. Keane that he and Mr. Allen were [801] partners does not make it so. This Exhibit 93 is admitted only for the limited purpose of assisting the jury in determining how much or how little credibility should be given to Mr. Keane, particularly with respect to the first time he claimed there was a partnership.

Q. (By Mr. Stocking): Mr. Keane, by the summer of 1945 when the Extension Company was formed, what were the possibilities of the Montana Leasing borrowing more money from Independence?

A. Not very good.

Q. And for what reason?

A. It was out of money, or out of property.

Q. Independence was? A. That's right.

Mr. Stocking: I have no further questions. Now, with regard to the exhibit——

The Court: Just a moment; have you finished your cross-examination?

Mr. Etter: I wanted the Court's permission to ask one question on direct, and one question on cross, and that's all.

The Court: Direct in your case?

Mr. Etter: No; for one question, I should say.

The Court: You were on voir dire.

Mr. Etter: Yes. [802]

The Court: And I wasn't sure whether that had been finished.

(Testimony of Francis Clayton Keane.)

Mr. Etter: Yes, that's finished, your Honor.

The Court: And you're back on redirect again.

Mr. Stocking: There were some exhibits that I didn't get around to re-offering yesterday, and I think at least two of them were re-identified by this witness; I think the others are now supported by additional testimony. Exhibits 42 and 43 are offered, being the bank signature cards, one for Delaware Mines, one for Lexington Silver Mines.

The Court: For the information of counsel I'd expect to take a recess at quarter after three. We have ten minutes to go. If after you're through with this you need to accelerate that a bit, I would consider acceleration.

Mr. Etter: I have no objection to these, to accelerate this, your Honor.

The Court: Exhibits 42 and 43 admitted, no objection.

(Whereupon, Plaintiff's Exhibits No. 42 and 43 for identification were admitted in evidence.)

Mr. Stocking: We'll re-offer Exhibit 44, the Callahan Consolidated deposit slip dated August 7, 1945, identified by the witness Beatrice McLean French. This [803] witness has further identified the \$6,000 Delaware Mines—the signatures on the Delaware Mines check which was written on that date.

Mr. Etter: To which we object on the ground there's no proper foundation laid to connect the

(Testimony of Francis Clayton Keane.)

defendant Allen with that exhibit by the testimony of either this witness or the witness McLean; the same will lead the jury to conjecture and speculation; pure hearsay as to the defendant Allen; it's immaterial, incompetent and irrelevant.

The Court: Objection overruled; Exhibit 44 admitted.

(Whereupon, Plaintiff's Exhibit No. 44 for identification was admitted in evidence.)

Mr. Stocking: The Court had reserved ruling on Plaintiff's Exhibit 48 which had been identified by Miss Nolting, from E. J. Gibson and Company, and were the checks written in the Beatrice McLean account. Some of the checks have been identified as bearing Mr. Allen's endorsement.

Mr. Etter: Yes. We desire to make the same objection that I just made to the other, and I wish to add to it the same objection that I made at the time of the offer of this exhibit, that is, on the face of each and every one of these separate items that appear in the exhibit are dates starting with the end of January, 1947, [804] extending as far as September 28, 1947, for and on the reason and on the ground that on the testimony of the witness himself he considered that there was no agreement or otherwise, assuming that there ever was, which we deny, between he and Allen after I think it was the fall or the early fall of 1946, and based further upon the ground and testimony adduced with re-

(Testimony of Francis Clayton Keane.)

spect to this witness and the defendant Grismer, which is clearly apparent, that no conspiracy then could exist so far as the defendant Grismer was concerned.

Mr. Stocking: If the Court please, these checks are connected with the stock certificates which the defendant Grismer testified were issued as original promotion stock, and Beatrice McLean French's testimony was that she had opened no account at Gibson's; the account was handled, she testified, by Mr. Allen.

Mr. Etter: I want to add furthermore, I'm not prepared to argue this, but it's been suggested to me that it's within the exempted transaction, having been made over a year after the original offering, and not claimed that it's any treasury stock.

Mr. Stocking: It's offered not for the purpose of showing any violation of the registration provisions, but for the purpose of connecting the defendant Allen with the proceeds of the sale of promotion stock. [805]

The Court: Well, as to five of these checks I'm pretty well satisfied as to what my ruling should be, but as to this check to cash, I'm not at all satisfied.

Mr. Stocking: Yes, the account was in evidence and identified as being one account.

The Court: Let me see the account.

Mr. Stocking: The stock certificates which have

(Testimony of Francis Clayton Keane.)

already been admitted in evidence, which support the account, support the checks.

The Court: Well, which support this "cash" check?

* Mr. Stocking: This is the account, if the Court please, and the first check is a cash item. I believe that has also been admitted.

The Court: The objection is overruled.

Mr. Etter: Exception.

The Court: Exhibit 48 admitted.

(Whereupon, Plaintiff's Exhibit No. 48 for identification was admitted in evidence.)

(Reporter's Note: This exhibit was previously admitted as shown on page 496 of this printed transcript.)

Mr. Stocking: Now, with respect to Exhibit 49, which is a copy of a letter to Mr. Allen identified by Beatrice McLean French, the Court reserved its ruling because attached to the letter was a registry return receipt, and the signature on it had not been identified. [806] I would like at this time to have the return receipt identified as Exhibit 49-a, and make an offer of the letter itself as Exhibit 49. This was also in connection with these same transactions, the mailing of these particular stock certificates to Mr. Allen in connection with the sales account.

The Court: What do you wish me to do?

Mr. Stocking: I'm renewing my offer as to Exhibit 49.

(Testimony of Francis Clayton Keane.)

The Court: There's no change.

Mr. Stocking: Well, you reserved your ruling until the——

The Court: I reserved ruling, and there's been no change, nothing has been done.

Mr. Stocking: Well, I could detach the Exhibit 49-a from 49, and offer only 49; that's my thought.

The Court: Well, assume it's detached, what difference does it make?

Mr. Stocking: As I understood the Court, the reason you didn't admit this was because of the fact Exhibit 49-a, as I call it now, had not been sufficiently identified. No question was raised as to the letter.

The Court: Exhibit 49 consisting of the part that is a return receipt is in the same position. Nobody has told me anything about the signature. The card was, until [807] you got it loose, a part of Exhibit 49. Tack it back, Mr. Clerk.

Mr. Stocking: Our position is this, that this is a part of the same transaction, and has been identified by the witness Beatrice McLean French as a copy of the letter, duplicate original of the letter which was mailed to the defendant Allen with those particular stock certificates which were run through an account in her name.

The Court: Well, I've reserved ruling until something was done. Since you don't wish to do it I'll reject Exhibit 49. Exhibit 49 is rejected. Objection sustained.

(Testimony of Francis Clayton Keane.)

* * *

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

The Court: Counsel, I'm interested in the testimony of Mr. Keane before the Securities and Exchange Commission I take it in the early part of 1947, about March. The redirect examination by Mr. Stocking I think properly makes it obligatory at least that I see that testimony and determine how much of it the defense is [808] entitled to have, with respect to whether or not Mr. *Allen* is now testifying truly as to what that testimony was.

Mr. Etter: Mr. Keane.

The Court: He says during recess hour he looked at it and finds he wasn't asked that question. Substitute Mr. Keane for Mr. Allen. Now, I think that should be given to me by the government.

Mr. Stocking: Mr. Denney has gone for it.

The Court: All right. There will be a recess of ten minutes. At the end of that ten minutes I would like it. We will convene; the jury will not come in.

(Short recess.)

(All parties present as before, and the trial was resumed.)

The Court: There has been handed to me what is labeled as "In the Matter of Independence Lead

(Testimony of Francis Clayton Keane.)

Mines Company, official report of proceedings before the Securities and Exchange Commission," in respect to the testimony of F. C. Keane apparently given on Wednesday, March 19, 1947. Now, there seems to have been suggested to me the bottom of page 122 and the top of page 123.

Mr. Stocking: And exhibit 11, if the Court please.

The Court: And it seems to refer to an exhibit that seems to be a carbon copy of Exhibit M in this case. [809] It seems to have been marked as D in some other transaction. Now, I assume that as far as this is concerned that I'm not privileged merely to refer to the defense that portion of this transcript that the government says refers to what Mr. Keane testified concerning the matter, but that to a degree I'm obligated to look at the transcript and see if there are any portions of it that bear either for or against the defendant's contention on this question of whether it was Mr. Keane that signed Mr. Allen's signature, or whether Mr. Keane at some other time was claiming that Mr. Allen wrote what Mr. Keane now admits was his writing. This transcript has in it apparently 117 pages. I don't mind reading to the defense now and putting in the record that part that's been marked as bearing on this proposition. Let me see Exhibit 10; let's see the other exhibits, exhibits 9 and 10 to this Securities and Exchange Commission transcript.

Mr. Stocking: Well, those were concerned with

(Testimony of Francis Clayton Keane.)

—I think they must be here, but those were concerned with something entirely foreign to this exhibit 11.

The Court: Well, I don't know.

Mr. Stocking: There was no connection with the defendant Allen.

The Court: Well, that's just what I wish to be able to say. I'd like to look at all the exhibits. [810]

Mr. Stocking: I will say that Mr. Denney and I looked through the whole transcript, he did this noon and I did during the recess, and could find no other reference to the note.

The Court: Well, counsel, in any event I feel that I should look at this transcript and then determine whether there is more of this transcript that should be made available to the defense than that portion which you wish to let them have. I'll read into the record what the transcript says on pages 122 and 123 during the examination of F. C. Keane.

Mr. Stocking: I don't think the defendant's name is mentioned in the rest of the transcript.

The Court: "Room 431 Post Office Building, Wednesday, March 19, 1947. Question: You have also handed me, Mr. Keane, a carbon copy of a letter or document which appears to be in the nature of an agreement bearing date October 14, 1944, that has not been completed. Answer: Let me write in the signatures that appear on the original. (Counsel handed paper to the witness) Question: You're

(Testimony of Francis Clayton Keane.)

adding the signatures in the blank spaces which appear on the second page of this exhibit? Answer: Yes. Question: You have added the signature of J. A. Allen and F. C. Keane beneath the words 'Montana Leasing Company'? Answer: That is right. Mr. Fegan: I'd like to have this [811] identified as commissioner's exhibit. Mr. Stocking: This exhibit will be identified as commissioner's exhibit No. 11 and admitted for the purpose of this investigation. Commissioner's exhibit 11 was admitted in evidence."

And it appears to me to be a carbon copy of the note itself, and apparently from what was said, Mr. Keane wrote out the signatures at that time on the carbon copy and you can compare the signatures as he wrote them and see if there appears to be any difference between those signatures as he wrote them and the signatures on the note itself. Now let me see 9 and 10.

Mr. Denney: Number 9 was a copy of the minutes of a director's meeting of Independence Lead.

The Court: How many exhibits were there altogether?

Mr. Stocking: Here's a list of the exhibits, your Honor. You'll notice that the first few are corporate records and audit reports and so on.

The Court: Well, I mean during Mr. Keane's testimony.

Mr. Stocking: There are no other exhibits that had any relation——

(Testimony of Francis Clayton Keane.)

The Court: The transcript only mentions 9, 10 and 11.

Mr. Stocking: That's correct. The other exhibits referred to other witnesses. [812]

The Court: Let me see 9 and 10.

Mr. Stocking: 9 is one of those that are in evidence.

The Court: Exhibit 10 as handed to me appears to be a set of documents and letters dated in 1939 and 1938, and I find no later dates than the year 1939 in Exhibit 10.

Mr. Stocking: Exhibit 9 was returned to the Independence Company. Parts of that exhibit, at least, are here in evidence. They were several sheets of these minutes of the meetings. These are the defendant's exhibits here, and the defendant may have a complete set of what we have.

The Court: Well, you have have these. I'll look at these and let you gentlemen know tomorrow morning. Mr. Keane will be required to be here tomorrow morning.

Mr. Stocking: Did you hear that, Mr. Keane?

Mr. Keane: Yes, I did.

Mr. Etter: That's part of it. I notice on my photostat it was marked exhibit 9. I think there were numerous directors' meetings reported.

The Court: Can you loan me this for the evening?

Mr. Stocking: Yes, your Honor.

(Testimony of Francis Clayton Keane.)

The Court: That will refresh my recollection of what is here.

Mr. Stocking: The question is, will we get an opportunity [813] to clear this up, then, with Mr. Keane tomorrow?

The Court: I don't know. Let me see exhibit 11 now, and the exhibit M to which it refers. You gentlemen have had an opportunity to look at 12 and 11. I'll give the clerk 11 and M. After I look at this I'll have a statement for you. It may clear it up, it may not.

Mr. Stocking: Some question may have been raised in the jurors' minds.

The Court: That's a risk you'll run, whether you'll be able to clear it up or not. You chose in your redirect to refer to a transcript by this witness.

Mr. Stocking: Well, I wanted to clear it up.

The Court: And if you've got a situation that you can't clear up, that's one of the risks of the attorneys. The jury may come in.

Mr. Stocking: Do I understand, then, that we're foreclosed from making any examination on this at this time?

The Court: On what?

Mr. Stocking: From making reference to the record at this time?

The Court: You can go as far as you want. All I'm telling you is, the more you talk about this record, the more you may be opening it all up.

(Testimony of Francis Clayton Keane.)

Mr. Stocking: Well, we have no fear about that.

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

Redirect Examination

(Continued)

By Mr. Stocking:

(Whereupon, copy of Defendant's Exhibit M was marked Plaintiff's Exhibit No. 95 for identification.)

Q. Mr. Keane, I'll hand you——

The Court: So there will be no misunderstanding, any statement that the Court made about you being permitted to examine as to the transcript means that it's subject to such objections as the defense may make, and subject to the ruling the Court may make as to such objections.

Mr. Stocking: I understand.

Q. I hand you what has been marked Plaintiff's 95 for identification, and ask you if you can identify that?

A. It's a carbon copy of Exhibit M.

Q. Defendant's M?

A. Defendant's M. It was signed at a different time; with the exception of the portion which is stamped on on the bottom, together with the figures that were entered there.

Q. And you're referring now to a stamp, "Se-

(Testimony of Francis Clayton Keane.)

curities and Exchange Commission, Exhibit Number blank''? A. That's right.

Q. Now, with respect to the signatures on this carbon, Plaintiff's [815] 95 for identification, when were they—or I mean, who placed those signatures on that?

A. I placed them on both instruments.

Q. And when did you place them on Exhibit 95?

A. At the time of this hearing, whatever date it was, March 19, 1947, is the date that it is marked.

Q. And has your recollection been refreshed from the transcript of that hearing?

A. Well, I read at noon what it contained, or the reference to this exhibit or this note.

Q. And when this exhibit was produced at the hearing did it contain any names in the blanks?

A. It didn't. I put them on during the hearing before the Securities and Exchange Commission.

Q. And in their presence?

A. In their presence, yes.

Q. And do you recall having been asked at any other time during that hearing a question relating to whether or not Mr. Allen had signed the original which is identified as Defendant's M?

A. At no time have I ever maintained that the name J. A. Allen which appears on Exhibit M, or the one which you have now marked as being Exhibit 95, Plaintiff's Exhibit 95, were other than in my own handwriting.

Mr. Stocking: We'll offer 95 in evidence. [816]

(Testimony of Francis Clayton Keane.)

Mr. Etter: No objection.

The Court: Exhibit 95 admitted, no objection.

(Whereupon, Plaintiff's Exhibit No. 95 for identification was admitted in evidence.)

Mr. Etter: This of course is subject to your Honor's own ruling concerning the examination of the further part of the transcript.

The Court: Yes. So I'll have no misunderstanding, I'm assuming that you have no objection to Exhibit 95 being admitted?

Mr. Etter: No, we haven't, your Honor.

The Court: All right.

Mr. Etter: And would it be proper to ask your Honor to read that particular part of the text that has to do with this exhibit, following the examination of Mr. Keane, to the jury?

The Court: You'd like me to read it when?

Mr. Etter: Following the admission of this exhibit.

Mr. Stocking: We have no objection to that being read at the present time.

The Court: Is that all right, now?

Mr. Etter: Yes, your Honor, that part of it.

The Court: The Court has been handed what appears to be a transcript of the evidence of Mr. Keane taken before the Securities and Exchange Commission, apparently [817] at Spokane, Washington, on March 19, 1947, it appearing that Mr. John M. Fegan was the examining attorney for the

(Testimony of Francis Clayton Keane.)

Securities and Exchange Commission, it appearing that Mr. Donald J. Stocking, the attorney examining Mr. Keane now, having then been the trial examiner, and it appears that on pages 122 and 123 of such transcript that the following occurred: "Question (by Mr. Fegan): You have also handed me, Mr. Keane, a carbon copy of a letter or document which appears to be in the nature of an agreement bearing date October 14, 1944, that has not been completed. Answer: Let me write in the signatures that appear on the original (Counsel handed paper to the witness.) Question: You're adding the signatures in the blank spaces which appear on the second page of this exhibit? Answer: Yes. Question: You've added the signature of J. A. Allen and F. C. Keane beneath the words 'Montana Leasing Company'? Answer: That is right. Mr. Fegan: I would like to have this identified as commission's exhibit. Mr. Stocking: This exhibit will be identified as commission's exhibit No. 11 and admitted for the purpose of this investigation. Commission's Exhibit No. 11 was received in evidence."

Redirect Examination

(Continued)

By Mr. Stocking:

Q. And can you identify that as the document referred to as commission's exhibit Number 11?

A. Yes; it's so marked on here. [818]

Q. And I'm referring to Plaintiff's 95?

(Testimony of Francis Clayton Keane.)

A. That's correct.

Mr. Stocking: If the Court please, at this time I'd like to re-offer Plaintiff's 19 for identification. This exhibit the Court held in abeyance pending its recollection of the testimony regarding two letters dated May 29, 1946, which appear in the exhibit, but which are unsigned. The exhibit was identified by the witness Nolting as having been received in their office in connection with the delivery of the stock certificates, and my recollection of the testimony is that Irene Vermillion testified all of these letters contained in Exhibit 19 had been prepared and mailed by her, together with the stock certificates.

The Court: This is Exhibit 19?

Mr. Stocking: 19, yes. There were these two letters that were unsigned, dated May 29, 1946. They're letters from the Pilot Company to E. J. Gibson, transmitting stock certificates. These are original letters taken from the broker's records, according to Miss Nolting's testimony.

The Court: Your objection continues?

Mr. Etter: Yes, your Honor.

The Court: Objection overruled.

Mr. Etter: Exception. [819]

The Court: Exhibit 19 admitted. I may advise counsel that I have checked my notes and have referred to them again at this time. Exhibit 19 is admitted, objection overruled.

(Testimony of Francis Clayton Keane.)

(Whereupon, Plaintiff's Exhibit No. 19 for identification was admitted in evidence.)

Mr. Stocking: There are still some exhibits that I offered last evening which were identified by this witness. I'm not sure whether the Court had—I think the Court had reserved a ruling on those, whether I should remind the court of it at this time while the witness is still here or not. Those were letters, the Elmer Johnston letters to this witness, and one was a copy of a letter by the witness Johnston to this witness, 80, 84, 86 and 88 and 85, which was the Johnston letter to Gibson to which was attached a copy of the underwriting agreement.

The Court: Well, you'll have to let me see them. Well, counsel, I'm very doubtful about 80 and 84; I'm more doubtful about 85, and I would rather discuss 86 and 88 in the absence of the jury. The jury may be excused a few minutes.

Mr. Stocking: I was going to suggest that—

The Court: Well, the jury might as well be excused.

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.) [820]

The Court: Exhibit 85 for identification is a letter by Elmer E. Johnston to the E. J. Gibson Company, and encloses what appears to be a copy of a communication sent by Glynn Evans to the E. J. Gibson Company. Of course, in a case of

(Testimony of Francis Clayton Keane.)

this kind once sufficient evidence has been submitted to justify a jury in finding that there was a conspiracy, the acts of any conspirator become evidence against all the others, whether they knew about the particular thing done or not. That's on the theory that a conspiracy is a partnership in crime. Just as in an ordinary legitimate partnership each partner is bound by what the other partner does, so in a criminal partnership each conspirator is bound by what his partner conspirator does, whether he happens to know of the single incident or not. It is a far cry from saying that because what Mr. Keane does is admissible against Mr. Allen, that what Mr. Johnston did in writing the letter to the Gibson Company is admissible against Mr. Allen, and I'm very doubtful of the admissibility of 85, so doubtful that at the present time I would not admit it. I've already said before that I don't think it makes much difference whether 80 was in evidence or not. It, however, instead of being a letter by Mr. Keane to Mr. Johnston, that is, instead of being an act of Mr. Keane, an alleged conspirator, is a letter that Mr. Johnston wrote. 86 and 88, if admissible, are admissible by reason of the cross-examination of Mr. Johnston. Counsel in leading questions to Mr. Johnston, which is permissible under the rules of evidence, had him indicate, at least, many transactions which would suggest that what Mr. Johnston had said or done to Mr. Allen had been about some-

(Testimony of Francis Clayton Keane.)

thing else than the Pilot, and letters 88 and 86 are written letters of Mr. Johnston back in 1946 saying what Mr. Allen did. For instance, 88 starts out this way; it is addressed to Mr. Keane: "Mr. Allen left with me copies of the articles of incorporation, by-laws, and material contracts in connection with the file, and I am now working on them," and later "Will you kindly go over this matter with Mr. Evans, and if necessary get in touch with Mr. Allen or Mr. Keane." Both from the standpoint of cross-examination of Mr. Johnston to show that Mr. Johnston was at least reporting to Mr. Keane Mr. Allen's activities, and also in support of Mr. Keane's testimony, it would seem to me that exhibit 88 is properly admissible.

Now, exhibit 86, a letter addressed by Mr. Johnston, addressed to Mr. Keane, contains this reference with reference to the Lucky Friday Extension: "However, I understood from Mr. Allen that minutes and resolutions looking toward the release of this stock in escrow would be delivered to me in order that I might take it to Olympia." [822] I'm letting you know that I'm inclined to admit 86 and 88, and I'm inclined to exclude exhibits for identification 80 and 85, and I'm somewhat inclined to exclude identification 84. Now, what you gentlemen have to say you had better say quickly.

Mr. Etter: No comments.

The Court: All right.

Mr. Erickson: Please the Court, I'd like to say

(Testimony of Francis Clayton Keane.)

briefly about 84, I understand that's a letter by Johnston to Keane about the Lucky Friday Annual report.

The Court: I recognize that.

Mr. Erickson: That letter is written to one of the principals in the conspiracy about a vital part—

The Court: I recognize that. It doesn't mention Mr. Allen.

Mr. Stocking: Mr. Johnston testified that it was his recollection that as a result of that letter Mr. Allen finally brought in the report to his office.

Mr. Etter: I don't think that's Mr. Johnston's testimony, that Mr. Allen brought in any report.

Mr. Stocking: Or that he gave him a figure.

Mr. Etter: Certainly not.

The Court: Just a moment; if Mr. Johnston wrote this letter to Mr. Keane, it doesn't show Mr. Allen brought in the figures. It's going to be admitted in this case by [823] the defense that somebody gave Mr. Johnston some figures. There isn't anything in that letter that indicates it was Mr. Allen. Mr. Johnston's testimony is as weak or strong after that letter is in as it was before.

Mr. Stocking: Yes, I'll have to correct my statement. I think his testimony was he got the information either from Mr. Keane or Mr. Allen. I think we'll withdraw the offer of that exhibit.

The Court: All right. Whether Exhibit 80 goes in or not will be determined later. I'm going to reject exhibits 80 and 84. 85, as I understand it,

(Testimony of Francis Clayton Keane.)

is—no, 84 is withdrawn. 80 and 85 will be rejected, 84 will be withdrawn, without prejudice to one side or the other offering them again if they wish, and I expect to admit in evidence exhibits 86 and 88.

Mr. Etter: Exceptions.

The Court: The jury may come in.

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

The Court: It is my understanding that Exhibit 84, for identification, which plaintiff offered and to which defendant objected, has been withdrawn by the government, is that correct?

Mr. Stocking: That is correct. [824]

The Court: It's not necessary for me to rule; Exhibit 84 withdrawn.

(Whereupon, Plaintiff's Exhibit No. 84 for identification was withdrawn.)

The Court: Exhibits for identification 80 and 85 are rejected.

(Whereupon, Plaintiff's Exhibits No. 80 and 85 for identification were rejected.)

The Court: Exhibits 86 and 88 are admitted, the objections of the defendant overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 86 and 88 for identification were admitted in evidence.)

(Testimony of Francis Clayton Keane.)

Mr. Stocking: No further questions.

Recross-Examination

By Mr. Etter:

Q. Mr. Keane, you heard the statement that his Honor Judge Black read from the transcript of the S.E.C. hearing? A. I did.

Q. And you stated that you were going to write the signatures on the exhibit, Plaintiff's 95, that appeared upon Defendant's Exhibit M?

A. Right.

Q. Is that right? A. Right.

Q. You didn't say you were going to write the names that [825] appeared, you said you were going to write the signatures, isn't that right?

A. Well, I didn't attach any significance to the use of either of the words or adjectives.

Q. You recognize, of course, there is a vast difference between a signature and a name?

A. There probably is, yes.

Q. And you didn't intend to convey that what you were writing was a signature at all, is that your testimony?

A. No, that is not my testimony. If I had been asked at that time, my testimony was that I was writing those signatures exactly the way they appeared on the original note.

Q. Well, Mr. Allen's signature didn't appear on the original note, though, did it?

A. Well, only insofar as I signed it.

(Testimony of Francis Clayton Keane.)

Q. In other words, if Mr. Allen writes your name out "F. C. Keane" you don't consider that's your signature, do you?

A. Under conditions, yes.

Q. I see. Now, did you have any discussion with any members of the commission, either in or out of that hearing, with respect to this note and the names?

A. I can't recall, other than I do know that we discussed it to the extent of the questions that you've just mentioned.

Q. You don't remember whether you had any discussion off the [826] record that doesn't appear in the transcript?

A. Not that I recall.

Q. Did you have any later discussion about that with Mr. Denney or any other members of the commission or employees of the commission?

A. If I did, or if I were asked the direct question at any time, my answer to it would have been that I signed Mr. Allen's name to that exhibit M, I think it is.

Q. Yes. You don't recall that you had such a conversation?

A. I don't recall the conversation, if I had one.

Q. You don't recall that you had such a conversation with Mr. Stocking either?

A. Not that I ever remember of.

Q. Or with Mr. Erickson?

A. I never had it with Mr. Erickson, I know.

Q. Or with any other person that you can now recall?

A. Nobody.

(Testimony of Francis Clayton Keane.)

Q. Now, at the time——

A. I'd like to withdraw that. I think possibly and probably Mr. Deney did state to me at one time that "Allen claimed that his signature on there was a forgery, and that you had signed it" and I said "That's correct, the part that I signed it is correct; I will not agree that it was a forgery." I think at one time I did have that conversation with Mr. Denney. [827]

Q. All right. Now, at the time that you produced this copy at the hearing as evidenced by the transcript which was read, where then was this original, Mr. Keane, Defendant's Exhibit M?

A. I couldn't tell you.

Q. You couldn't tell me? A. No.

Q. How did you happen to have this copy with you when you came down to Spokane?

A. Well, I think they subpoenaed certain records. I think that was enumerated among them.

Q. Well, did they subpoena a copy, or did they subpoena a note?

A. Well, I think they were furnished copies, rather than the originals.

Q. You had this in your office at that time?

A. That's my recollection of it, Mr. Etter.

Q. But you didn't bring it down with you?

A. I think that is correct.

Q. You brought the copy with you?

A. I think that is right.

Q. And is it your recollection now that at the time you were down here testifying, at which time

(Testimony of Francis Clayton Keane.)

you submitted this copy, Plaintiff's Exhibit 95, that the original, Defendant's Exhibit M, was in Wallace in your office? [828]

A. I couldn't say positively, but that is my recollection.

Q. Isn't it a fact that when you came down to testify in front of the Commission you had not only this copy, but you likewise had the original with you?

A. It is within the realm of possibility that I did have the original with me.

Q. And on that date isn't it a fact that this original note bore only your own signature, on that date?

A. I don't think that is correct.

Q. But you think possibly you had it with you down here?

A. No, I didn't say that; I said I've got no independent recollection——

Q. Of having it with you?

A. ——of having it with me.

Q. And you're sure that you didn't present it to Mr. Allen while you were down here?

A. No, I did not.

Mr. Etter: That's all.

Redirect Examination

By Mr. Stocking:

Q. There were a number of records of Independence (Testimony of Francis Clayton Keane.)

dence which you did not produce on that date, is that correct? A. There were others, yes.

Recross-Examination

By Mr. Etter:

Q. Did you produce the Defendant's Exhibit M for the Commission at a later time, the original note? [829] A. I probably did; I don't know.

Q. Do you recall when that was?

A. I don't know. I said I don't recall having ever produced that for the Commission.

Mr. Etter: That's all.

* * *

(Whereupon, there being no further questions, the witness was excused.)

J. T. HALIN

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. J. T. Halin.

Q. Halin? A. Halin, yes, sir.

Q. And you'll have to speak loudly, Mr. Halin, so that all the jurors can hear your answers.

A. All right.

Q. Where do you live, Mr. Halin?

A. Spokane.

Q. And how long have you lived here?

A. 1906.

Q. What business are you in? [831]

A. Contracting.

Q. Do you know the defendant James Allen?

(Testimony of J. T. Halin.)

A. Yes, sir.

Q. Did you have any transactions with the defendant James Allen in connection with the purchase of Lucky Friday Extension Mining Company stock in the fall of 1945? A. No.

Q. Did you have a transaction in connection with the purchase of such stock in which Mr. Allen played a part? Was he connected with the transaction at all where you bought some stock?

Mr. Etter: I'm going to object to the form of that question; I can't just lay my hands——

The Court: Yes, I think that is right.

Q. I'll withdraw that question. Did you buy some Lucky Friday Extension stock from any of the defendants, Keane, Grismer, or Allen, in the fall of 1945?

A. I bought from Mr. Keane 200,000 shares; that's the fall of 1945.

Q. What date? A. 1945.

Q. And what was the date?

A. Well, I don't know exactly the date when the deal was consummated. The deal was made in Wallace, but I purchased the stock either 14th or 15th of October, 1945. [832]

Q. The 14th or 15th of October, 1945?

A. Either of those dates, yes.

Q. And how much did you pay for the 200,000 shares of Extension stock?

A. 10 cents a share.

Q. \$20,000? A. Yes, sir.

(Testimony of J. T. Halin.)

Q. And what was the form of your consideration which you gave for them?

A. I gave him \$7,000 cash and a \$13,000 check.

Q. \$7,000 in cash and a \$13,000 check, and to whom was the check made payable?

A. The check was made payable to Clayton Keane.

Q. And to whom did you give this cash and check?

A. I gave this check and cash from Mr. Allen, when he delivered the stock.

Q. He delivered the stock where?

A. He delivered the stock to me, and I told him——

Q. Whereabouts?

A. At the room, at the Hotel Davenport.

Q. Here in Spokane? A. In Spokane.

Q. And did you have any later transactions with this defendant where you purchased some Extension stock?

A. The first transaction I had Mr. Allen was in January, 1946. [833]

Q. And how many shares did you purchase at that time?

A. Well, it was 75,000 shares Lucky Friday Extension.

Q. And what was the price you paid for that stock? A. Paid twenty-four cents and a half.

Q. Twenty-four and a half cents. Now, do you have in mind the names of the various brokers

(Testimony of J. T. Halin.)

through whom your stock that you purchased was sold? A. Yes, I have.

Q. Can you name them?

A. I practically done business with all of them, more or less.

Q. Yes, and what brokers did you sell this stock out to?

A. Well, I sold to E. J. Gibson, Paul Sandberg——

Q. Paul Sandberg?

A. Standard Security, I should say, and maybe Pennaluna.

Q. And W. J. Nichols? A. Yes.

Q. And L. E. Nichols? A. Maybe.

Q. Did you sell any through him?

A. I may have. I know I have done business with him.

Q. Do you recall in whose name some of those certificates were issued that were obtained by you in either of those two transactions?

A. No. Some was on, I think it's Irene Vermilion. I know some of those certificates was. [834]

Q. And did you have a nominee for your own?

A. Yes.

Q. And what was his name?

A. Well, some of the stock I put in a fellow by the name of G. R. Wilson who's working for me, and still working for me.

Q. And was some of this stock put in his name when it was delivered to you? A. Yes.

(Testimony of J. T. Halin.)

Q. Now, did you refresh your recollection or obtain a memo regarding the numbers of the stock certificates of Extension, certificates of this stock which was delivered by Mr. Allen which were sold out through Preston & Raef? Did you obtain a memo concerning that transaction?

A. From Preston & Raef? Yes.

Q. Do you have it?

A. I have it, yes.

Q. Will you produce it?

A. I just got this the other day, last Friday, I think.

Q. And can you give us the numbers? Would that enable you to testify as to the numbers of the certificates which you delivered to Preston & Raef, of this Extension stock.

A. You have a copy of the letter there, have you?

Q. Yes.

A. I furnished a copy of the letter to [835] Mr. Denney.

Q. Yes.

A. Why don't you read those numbers?

Q. In the first paragraph the memo refers to certificate number 1082, the name of G. R. Wilson, for 10,000 shares delivered to Preston & Raef October 15; does that refresh your recollection as to that certificate?

A. That must be the record; you know I got those from Preston & Raef.

(Testimony of J. T. Halin.)

Q. And on October 20, 1945, certificates number 1186 through 1210 inclusive for 25,000 shares. Does that refresh your recollection as to those certificates which were sold through Preston & Raef?

A. I had this record from Preston & Raef. I don't remember. Denney asked me, we went down to Preston & Raef, and get this record.

Q. Yes.

A. Because myself, I never yet tried to keep track of the numbers of stock certificates.

Q. You went to your broker and made a request for the numbers, that's correct, isn't it?

A. At Denney's advice; Mr. Denney and I both went there together.

Q. Yes; and on November 3, 1945, certificates number 1298 to 1307 for a total of 10,000 shares; November 16, 1945, certificates number 1250 through 1256 inclusive for a [836] total of 7,000 shares, and certificate number 1057 for 5,000 shares, making a grand total of 57,000 shares received from you, is that correct?

A. Well, you left off 7,000 shares for G. R. Wilson, then a thousand, left 75,000 shares; looks like it's to Irene Vermillion.

(Whereupon, letter Preston & Raef to J. T. Halin was marked Plaintiff's Exhibit No. 96 for identification.)

Q. Now, Plaintiff's 96 is the letter to which you have just been referring, is it not, Mr. Halin?

(Testimony of J. T. Halin.)

A. Yes.

Q. And you received that from your broker, Preston & Raef, concerning your transactions in 1945 in Lucky Friday Extension stock, and it gives the numbers of the certificates and the names which appeared on the certificates which you delivered for sale on the dates appearing in the letter, is that right? A. Yes.

Mr. Stocking: We want to offer at this time Plaintiff's 96 for identification for the purpose of identifying the certificates which were sold through Preston & Raef by Mr. Halin.

Mr. Etter: Your Honor, at this time we will stipulate that this is a letter of Preston & Raef, and [837] that Preston & Raef received a selling order on the dates set forth, and did dispose of the shares mentioned in the certificate numbers set forth herein; we will stipulate as to those facts, but we want to make our objection only to the materiality and the competency and the relevancy of the information. We will stipulate the information is correct, without calling Preston & Raef here to identify it.

The Court: All right, under those circumstances I'll overrule the objection, if you're making it.

Mr. Etter: Yes, I'm making the objection.

The Court: You realize that over your objection I would not permit this letter to be in evidence?

Mr. Etter: That's correct.

(Testimony of J. T. Halin.)

Mr. Stocking: I would not have offered it if the stipulation had not been arranged.

The Court: All right, under the stipulation waiving the necessity of the brokerage house, and under the stipulation conceding the correctness of the certificate numbers and so forth, the letter is admitted in evidence merely for the better understanding by the jury of the testimony of this witness.

Mr. Etter: And the objection we have taken, the ordinary objection to materiality and competency and relevancy, is overruled? [838]

The Court: Overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 96 for identification was admitted in evidence.)

Q. (By Mr. Stocking): Mr. Halin, with regard to your check in the sum of \$13,000, do you still have that cancelled check? A. No, I haven't.

Q. What happened to it?

A. Well, at the time, I rent part of my office and warehouse, and I destroy a lot of——

Q. Just briefly, what happened to it?

A. I destroyed a lot of records, and then Mr. Wilson, who was working for me, he got in the wrong file and he destroyed some of those records, but I have letter in my pocket, I got it from the Spokane and Eastern, show when check went through the bank.

Q. What date was that?

(Testimony of J. T. Halin.)

A. I'll have to look. October 17, 1945.

Q. That your check cleared back through your bank?
A. Yes.

Q. In the sum of \$13,000? A. \$13,000 even.

Mr. Stocking: That's all. [839]

Cross-Examination

By Mr. Etter:

Q. You've lived here, Mr. Halin, about 43 years?

A. Yes, sir.

Q. And you have been most of that time a general contractor?
A. Well, I have, yes.

Q. And until several years ago that was your primary business?

A. I done the work here for Mr. P. F. Peterson about 15 years before I went into contracting for myself.

Q. Then you went into contracting for yourself about 1921 or 1922?
A. About 1920.

Q. And you have been a general contractor since that time?
A. I have been.

Q. And has it been customary with you, Mr. Halin, a customary practice, to purchase large blocks of mining stock in different corporations?

A. I have done it, yes.

Q. And you have, as you say, purchased considerable in Lucky Friday Extension?

A. Yes, sir.

(Testimony of J. T. Halin.)

Q. You did, over a period of time, and you've purchased in Silver Syndicate, isn't that correct?

A. Yes, I have purchased Silver Syndicate.

Q. Mohawk, and different mines?

A. I bought 250,000 shares Mohawk in one crack.

Q. Now, you say you made the purchase of the stock, arranged for it with Mr. Keane at Wallace, for 200,000 shares of Lucky Friday?

A. Yes, sir.

Q. And you made the deal with Mr. Keane?

A. I made the deal with Mr. Keane.

Q. That's at Wallace, Idaho?

A. Wallace, Idaho.

Q. Now——

A. May I go a little further?

Q. Yes.

A. I had done business previous Mr. Keane which prove satisfactory.

Q. You had done business before with him?

A. Yes. In the fall of 1944 I loaned Mr. Keane \$20,000 on Clayton Silver Lead stock, which I took as security.

Q. Oh, Keane had sold you prior to that time——

A. No, he didn't sold me; he loaned the money, because I have been in the practice of loaning money on real estate and mining stock.

Q. And he gave as collateral Clayton Silver Mine stock? A. Yes.

Q. Was that his stock?

A. I presume it was. He was recommended to

(Testimony of J. T. Halin.)

me as one of the prominent attorneys in the State of Idaho. [841]

Q. And you gave him that check for the Clayton Silver Mines?

A. Well, that's at that time, yes, sir.

Q. So you had had dealings with him before this?

A. But I didn't take the stock, I just took it as collateral, it laid around ninety days, or something; Mr. Keane instructed me to sell the stock, then when I receive his money, he receives his money, and I have the letter to prove.

Q. I see, and paid off the loan that way?

A. Yes.

Q. So you sold the Clayton stock that he pledged, and paid off the loan that you had made to him?

A. Yes.

Q. When was the first time that you had any business dealings with the defendant Allen in regard to purchase of any stock?

A. I think it was January, 1946.

Q. And that was the first time that you had any dealings with him?

A. That's the first time I had any dealings with Mr. Allen.

Q. I see. Mr. Halin, I might ask you, do you recall being or attending a meeting, or being with a group of people in Wallace that included Mr. Allen and Mr. Keane and Mr. Sekulic and yourself and

(Testimony of J. T. Halin.)

a couple of other gentlemen, when they discussed the Lucky Friday Extension? [842]

Mr. Stocking: We'll object to this as improper cross-examination.

The Court: Overruled.

A. Can I answer that?

Q. Yes.

A. Yes, that was the spring of 1945.

* * *

(Whereupon, there being no further questions the witness was excused.)

PAUL L. SANDBERG

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Paul L. Sandberg.

Q. And what is your business?

A. Broker and dealer in securities.

Q. Under what name? [844]

A. Standard Securities Corporation.

Q. How long have you been in that business?

A. Oh, about—since 1931, for myself.

Q. And in Spokane?

A. In Spokane, yes.

Q. Are you acquainted with the defendant Allen?
A. I am.

(Testimony of Paul L. Sandberg.)

Q. Do you carry an account for the defendant James A. Allen? A. I have had.

Q. Did you produce on request your account card? A. I have it here with me.

Q. Or account ledger. Did you also bring with you at our request your company's checks showing payments which have been made on this account of James A. Allen? A. I have.

Q. May I have those, please? And did you also bring with you your in-and-out record for Lucky Friday Extension Company's stock?

A. I have.

(Whereupon, in and out ledger of Standard Security on Extension stock was marked Plaintiff's Exhibit No. 97 for identification.)

(Whereupon, five checks to Allen from Standard Security were marked Plaintiff's Exhibit No. 98 for identification.) [845]

(Whereupon, account of J. A. Allen with Standard Securities was marked Plaintiff's Exhibit No. 99 for identification.)

(Whereupon, in and out ledger of Standard Securities on Pilot stock was marked Plaintiff's Exhibit No. 100 for identification.)

(Whereupon, five checks to Allen from Sandberg were marked Plaintiff's Exhibit No. 101 for identification.)

(Testimony of Paul L. Sandberg.)

Q. (By Mr. Stocking): Now, you have also handed me the in and out record for Pilot Silver Lead Mines Company stock, is that correct?

A. Correct. [846]

Q. And some payments reflected on the J. A. Allen account for the sales of Pilot stock?

A. That's right.

Q. Now, can you identify each of these exhibits for me, please, beginning with 97, just state what it is, briefly?

A. This is a record from the Standard Securities Corporation books of the Lucky Friday Extension certificates received and a description of them, and who they're delivered to after they leave our office again.

Q. It gives the certificate numbers on it?

A. That's right.

Q. And now referring to 98, what is that, please?

A. That is five checks issued by the Standard Securities Corporation.

Q. To whom?

A. Payable to J. A. Allen and James Allen.

Q. And are those checks reflected on Exhibit 99?

A. They are.

Q. And will you identify Exhibit 99, please?

A. That is an account record kept by the Standard Securities Corporation of an individual account with James A. Allen.

Q. And that's the defendant here?

A. That is.

(Testimony of Paul L. Sandberg.)

Q. And now identify Plaintiff's 100, please, for identification. [847]

A. That's a certificate registry sheet on Pilot Silver Lead showing certificates, a description of the certificates received as to number and date received and name they're issued in and to whom they were delivered in leaving our office.

Q. And both 97 and 100 are sometimes referred to as your in and out records, is that right?

A. In and out certificate record.

Q. Now refer to Plaintiff's 101 and identify that exhibit, please.

A. Five checks, my personal checks, payable to James A. Allen.

Q. And what were they given in payment for?

A. Various stock that I purchased from him personally.

Q. Are those reflected on the J. A. Allen account?

A. Not on that ledger card, no. These are personal transactions, and this is corporation records.

Q. That's your personal entry?

A. Stock that I bought from him personally.

Q. Then these checks aren't related to any of the stock which appears on these exhibits 97 or 100?

A. No.

Mr. Stocking: I'll not offer exhibit 101, which are the personal checks. I'll ask permission to withdraw that exhibit so it can be returned to Mr. Sandberg. At this time I'll offer 98, 99, 97 and 100. [848]

(Testimony of Paul L. Sandberg.)

Mr. Etter: May I ask a question on voir dire?

The Court: You may.

Voir Dire Examination

By Mr. Etter:

Q. On this Plaintiff's identification 99, Mr. Sandberg, I notice the transactions begin July 25. What year does this cover? A. 1947.

Q. 1947; pardon me, I didn't see that.

A. It's up here in the corner.

Q. The first transactions then were had in July of 1947? A. That's right.

Q. And that covers all of these exhibits that I have here? A. I think so, yes.

Mr. Etter: I'm going to object to the admission of each and every one of these exhibits on the ground that they're incompetent, irrelevant and immaterial, and go to prove no issue in this case; they indicate that any transaction had was in July, the end of July, 1947, have no connection with any issue in the case, not binding on the defendant Allen as to any issue, don't go to prove any issue, they're incompetent, irrelevant and immaterial as they refer to the defendant Allen. [849]

* * *

(Whereupon, at 4:55 o'clock P.M., the Court took a recess in this cause until Tuesday, June 14, 1949, at 10 o'clock A.M.)

Tuesday, June 14, 1949, 10 o'clock A.M.

(Seventh day of trial)

* * *

The Court: You may proceed.

PAUL L. SANDBERG

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Mr. Stocking: I think I had proceeded to the point where I had offered in evidence Plaintiff's 97, 98, and 99, identified by this witness as records relating to transactions in Lucky Friday Extension account with the defendant James A. Allen.

Mr. Etter: Did I voice an objection, Mr. Reporter? Would you read that objection, please?

The Reporter: Mr. Stocking had also offered 100.

Mr. Stocking: Oh, yes, 100 was the Pilot in and out ledger.

The Court: Exhibits offered, you've made your objection; you'd like Mr. Taylor to read the objection?

Mr. Etter: Yes, your Honor.

(Whereupon, the reporter read Mr. Etter's objection appearing at typed page 790 of this transcript, just previous to the adjournment on June 13, 1949.)

The Court: Let me see the indictment, please, Mr. Clerk. As I understand it, the exhibits offered are 97, 98, 99 and 100?

(Testimony of Paul L. Sandberg.)

Mr. Stocking: Yes, your Honor.

The Court: Objections are overruled; exhibits 97, 98, 99 and 100 admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 97, 98, 99 and 100 for identification were admitted in evidence.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. I hand you what has been marked Plaintiff's Exhibit 101 for identification, a group of checks with slips attached thereto, and ask you if you can identify those? A. I can.

Q. And what are they? [852]

A. They're five of my personal checks drawn at various times payable to James A. Allen.

Q. And attached to these checks appear to be notations. Who made those?

A. Those are my notations.

Q. And what is the significance of those notations?

A. They are my memos of various amounts of stock I purchased from him, and the certificate numbers shown on there that were delivered to me.

Q. And what stock, of what company?

A. Pilot Silver and Lucky Friday Extension. There's also one check in there on a loan I made to

(Testimony of Paul L. Sandberg.)

him; I loaned him some money on some of this stock to start with, which I later bought from him.

Q. And is the certificate number written on the slip with respect to the loan? A. They are.

Q. And that stock that was given to you was given to you by whom? A. James A. Allen.

Q. And have you retained some of this stock as your personal property now?

A. It is my personal property right now.

Mr. Stocking: We'll offer in evidence Plaintiff's 101. [853]

Mr. Etter: May I ask just one or two questions on voir dire?

The Court: Certainly.

Voir Dire Examination

By Mr. Etter:

Q. Mr. Sandberg, these transactions you say were private transactions with Mr. Allen?

A. They were.

Q. On some of these did you bid Mr. Allen on the stock, do you recall?

A. He would ask me what I would pay for some stock, and I made him the bids.

Q. And you'd make the bids? A. Yes.

Q. And one or two of these attached to this exhibit, were stocks transferred to you for loans?

A. The stock wasn't transferred to me; he gave me the certificates as enumerated on there, collateral to the loan at the time it was made.

(Testimony of Paul L. Sandberg.)

Q. As collateral for the loans? A. Yes.

Q. That was the original transaction having to do with these? A. Yes.

Mr. Etter: I'm going to object to these as incompetent, irrelevant and immaterial to prove any issue in the indictment as laid against the defendant Allen; no [854] proper foundation or connection shown as to these transactions with any count laid in the indictment as charged against the defendant Allen.

The Court: Exhibit 101 is admitted; objection overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 101 for identification was admitted in evidence.)

The Court: You may proceed.

Mr. Stocking: That's all.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.)

E. R. ERICSON

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name to the Court and jury, please? A. E. R. Ericson.

Q. And your business?

(Testimony of E. R. Ericson.)

A. Employed with the Old National Bank of this city.

Q. In what capacity, Mr. Ericson?

A. Assistant vice president.

Q. And how long have you been such?

A. About three or four years.

Q. And did you respond to court today under a subpoena duces [855] tecum to bring certain documents from the bank?

A. I did.

Q. And do you have those documents with you?

A. Yes, I do.

(Whereupon, draft request to Old National Bank was marked Plaintiff's Exhibit No. 102 for identification.)

(Whereupon, cashier's check payable to J. A. Allen for \$5,000 was marked Plaintiff's Exhibit No. 103 for identification.)

Q. I might ask you, Mr. Ericson, what the procedure is for issuing cashier's checks in the bank?

A. Cashier's checks are issued at the request of the customer.

Q. A written request?

A. A written request.

Q. And those checks are kept on file?

A. They are.

Q. I'll hand you Plaintiff's identification 102, and ask you what that is?

A. That is a draft request directed to the Old National Bank signed J. A. Allen, dated October

(Testimony of E. R. Ericson.)

15, 1945, for a cashier's check to be issued in favor of J. A. Allen for \$5,000.

Q. I'll hand you Plaintiff's identification 103, and ask you what that is?

A. That is a cashier's check of the Old National Bank dated [856] October 15, 1945, payable to the order of J. A. Allen, for \$5,000.

Q. Was that cashier's check, identification 103, issued in pursuance of identification 102, the request? A. Yes, it was.

Mr. Erickson: I'll not offer these in evidence at this time. I do not think they've been properly connected up. That is all; you may examine.

Mr. Etter: No cross-examination.

Mr. Erickson: That's all, then, Mr. Ericson may be excused.

The Court: Any objection?

Mr. Etter: Not at this time, your Honor, I don't believe there is.

The Court: Well, if I excuse him he's excused.

Mr. Etter: He may be excused.

(Whereupon, there being no further questions, the witness was excused.)

F. C. GREENE

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. F. C. Greene.

Q. And what is your business?

A. Manager of a stock brokerage office in Butte, Montana. [857]

Q. And what is that brokerage office?

A. J. A. Hogle and Company.

Q. And were you so employed there—for how long were you employed there as manager?

A. Since 1941.

Q. Mr. Greene, did you have a transaction with Mr. James A. Allen in connection with some Lucky Friday Extension Mining Company stock?

A. Yes, sir.

Q. In 1945, December 3, on or about that date?

A. Yes, sir.

Q. Do you know Mr. James A. Allen?

A. Yes, sir.

Q. Is this the Mr. James A. Allen——

A. Yes, sir.

Q. ——with which you had the transaction? Now, Mr. Greene, what was the nature of that transaction?

A. I don't remember any details.

(Whereupon, notice of sales by Hogle of Ex-

(Testimony of F. C. Greene.)

tension stock, account of J. A. Allen, was marked Plaintiff's Exhibit No. 104 for identification.)

(Whereupon, check Hogle to Allen 12/3/45 was marked Plaintiff's Exhibit No. 105 for identification.)

Q. Mr. Greene, I'll hand you Plaintiff's identification 104 [858] and ask you to state what those are?

A. Those are confirmation of sales mailed to customers from our main office in Salt Lake.

Q. And what do those confirmations represent?

A. They show sales of 35,000 Lucky Friday Extension.

Q. For whom? A. For Mr. J. A. Allen.

Q. And what date? A. On November 29.

Q. Of what year? A. 1945.

Q. Now, Mr. Greene, I will hand you Plaintiff's identification 105, and ask you to state what that is?

A. That's a check made payable to Mr. Allen for \$6,872.95, signed by me, and mailed to Mr. Allen from *out* Butte office.

Q. And bearing what date?

A. Bearing date of December 3, 1945.

Q. Does identification 105 have any relation to identification 104, and if so, what?

A. It covers the sale of 35,000 Lucky Friday Extension on November 29.

The Court: How many thousand?

A. Thirty-five thousand.

(Testimony of F. C. Greene.)

Mr. Erickson: I will offer 104 and 105 in evidence. [859]

Mr. Etter: A few questions on voir dire.

Voir Dire Examination

By Mr. Etter:

Q. Mr. Greene, was that the name?

A. Yes.

Q. Are you acquainted with F. C. Keane?

A. I think I met the gentleman once.

Q. Met him once; wasn't that on or about the date of these instruments?

A. That I don't remember.

Q. You don't remember? A. No, sir.

Q. Don't you remember that on the same—do you remember, rather, on the same day as these, on or about the time these instruments were executed and this Lucky Friday Extension stock was given to your company for sale, that Mr. Keane likewise gave your company a substantial share of Clayton Silver Mines stock?

Mr. Erickson: I object as improper cross-examination.

A. I really don't remember.

Mr. Erickson: I object as improper cross-examination, not having been gone into on direct.

The Court: Well, this is preliminary; I'll permit this question to be answered. [860]

Q. (By Mr. Etter): Was it handed to you in the name of O. Raredon?

(Testimony of F. C. Greene.)

A. That I don't remember.

Q. Do you remember at the time of this transaction that you sold some Clayton Silver Mines in the name of O. Raredon?

A. No, I don't remember; it's a long time ago.

Q. Well, do you remember whether Mr. Allen personally participated in this transaction?

A. Not definitely. I think he delivered the certificates to me personally.

Q. Are you sure that he did?

A. I'm not sure. I think he did, though.

Q. Could this check that you have *you* mailed— isn't it a fact that you mailed that to Mr. Keane's office in Wallace?

A. That I don't remember. I think it should have been mailed to Mr. Allen, unless he gave Mr. Keane's address.

Q. Or you're not sure whether Mr. Keane gave Mr. Keane's address to you and sold the stock in Mr. Allen's name?

A. No, he didn't do that.

Q. But you sent this check someplace, you think to Mr. Allen?

A. Yes, sir.

Mr. Etter: That's all.

Mr. Erickson: Is there any objection?

Mr. Etter: Yes, we'll object on the ground it's incompetent, irrelevant and immaterial to prove any issue in this case; it's not joined up; no proper foundation has been laid.

The Court: Let me see it.

(Testimony of F. C. Greene.)

Mr. Erickson: Well, there's perhaps another question or two I should ask in view of the objection.

Further Direct Examination

By Mr. Erickson:

Q. Mr. Hogle, or Mr. Greene, rather, will you explain each of the component sheets of the Plaintiff's identification 104? What do each of those sheets mean?

A. Well, one sheet shows the sale of 5,000 shares—do you want the price?

Q. To whom sold, yes.

A. It was sold to E. J. Gibson Company, brokers in Spokane.

Q. And the price?

A. The price, at $20\frac{3}{4}$ for 5,000 shares, 20 cents for 20,000 shares, 21 cents for 10,000 shares.

Q. Go ahead and explain the rest of it.

A. Well, what explanation do you want?

Q. Is that all the explanation?

A. That's all. That was sold to the Spokane broker.

Mr. Erickson: Very well, then, I will pass them up to the Court.

Mr. Etter: What number was that exhibit?

Mr. Erickson: 104 and 105; the check was 105. At [862] the same time I'd like to have the court consider the stock certificates. I have some more questions to ask.

(Testimony of F. C. Greene.)

The Court: What exhibit?

Mr. Erickson: That's an identification, not an exhibit; it's 50-a.

Mr. Stocking: Identified by Elmer Johnston.

Mr. Erickson: There's another question I would like to ask the witness about identification 50-a, the certificates.

The Court: Has there been any evidence as to whether the certificates referred to on the first three sheets or the red sheets of identification 104 have any relation to the certificates shown on the last three sheets or the white sheets of the same identification?

Mr. Erickson: No. That's the next question I was going to ask the witness, in view of the objection that's been raised.

The Court: All right, ruling reserved.

Direct Examination

(Continued)

By Mr. Erickson:

Q. Mr. Greene, I will hand you Plaintiff's identification 50-a, and ask you to state what those are?

A. Those are stock certificates representing Lucky Friday Extension Mining Company.

Q. And where did you receive those stock certificates?

A. Well, according to our records, certificates 1178, 1179, [863] 1181, 1182, 1183, 1184, and 1185 were received from Mr. Allen.

(Testimony of F. C. Greene.)

Q. Are those the same stock certificates that are covered in Plaintiff's identification 104?

A. Well, according to our records, that's what it shows, yes, sir.

Q. These are the same stock certificates that were sold by your concern to E. J. Gibson?

A. That's right; those were the same numbers we have.

Mr. Erickson: I renew the offer now of 104 and 105.

Mr. Etter: Just one minute on voir dire.

Mr. Erickson: Just a minute, I'll complete my direct all at once here.

Mr. Etter: All right.

Q. (By Mr. Erickson): On these attached slips here to Plaintiff's 50-a, what are those attached slips, containing stamps and so forth? Do you identify those?

A. No, I can't. They're from E. J. Gibson Company. They just show a stock transfer paid on it when delivery is made, they show stock transfer.

Q. Those are put on by the broker through whom the stock is sold to the public?

A. That's right. Well, they just show the transfer tax being paid. [864]

Q. That is the statutory tax according to——

A. The Federal tax.

Q. The Federal tax according to Federal statute?

A. Yes.

(Testimony of F. C. Greene.)

Mr. Erickson: I will also offer 50-a at this time again.

Cross-Examination

By Mr. Etter:

Q. Do you keep what we call an office card or a card on the individual?

A. We keep a record on the transaction showing the number of certificates that are delivered to us, and in turn that we send to the broker we sell it to.

Q. Does the card indicate who delivered the certificates to you?

A. It would show from the account it was sold in; it would show that Mr. Allen, who sold it, delivered the certificates.

Q. Would it show a manual physical delivery by him, or would it show mailing from him?

A. No, It would show—well, it doesn't make any difference if it was received through the mail from him, it would still show it was received from him, or if it was received by hand it would show the same thing.

Q. But all you would have on your card was "Received from Mr. Allen December 5, 1945," or thereabouts, what date is it? [865]

A. I think the receipt would show the same date it was sold, November 29.

Q. Your office record doesn't indicate whether it was manually delivered to you or received through the mail?

(Testimony of F. C. Greene.)

A. That's right, it wouldn't show.

Q. Does your office record indicate the—I think you said the check was mailed, however?

A. The check was mailed from Butte to Mr. Allen.

Q. And does your record show where it was mailed? A. No, I don't believe so.

Q. Do you know whether you carry an account at this time, Mr. Greene, in your office, or carried an account about that time under the name of O. Raredon? A. No, I don't.

Q. Are you saying that you didn't carry it?

A. No. I don't remember.

Q. Did you carry an account at that same time or approximately there, November 29, under the name of F. C. Keane?

A. That I wouldn't remember.

Q. That you wouldn't remember? A. No.

Q. Would you remember whether or not any Clayton Silver Mines stock was sold either through the account you have listed to J. A. Allen, F. C. Keane, or O. Raredon?

Mr. Erickson: To which we object as improper cross-examination, [866] about Clayton Silver.

A. I still don't remember.

Q. You still don't remember?

A. No, sir, I'm sorry.

The Court: The ruling is unnecessary.

Q. Would it be possible for you to get that information?

(Testimony of F. C. Greene.)

A. Oh, I suppose we might find it in our records. Which information do you refer to?

Q. Whether or not you carried accounts on or about this date, that is, November 29, between there and the middle of December of 1945, either in the name O. Raredon, or F. C. Keane, and whether or not any Clayton Silver Mines stock was sold through either of those two accounts or the account of J. A. Allen on or about the same time as this transaction.

A. I believe we could find that information out in our records.

Q. All right, will you do that?

Mr. Etter: I'm going to object to the admission of this exhibit on the ground it's incompetent, irrelevant and immaterial, the evidence indicates no proper foundation or identity to prove any issue laid in the indictment as against the defendant Allen.

The Court: That's Exhibit 50-a?

Mr. Etter: This is Exhibit 50-a, your Honor.

The Court: Admitted; objection overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 50-a for identification was admitted in evidence.)

The Court: You may let me see Exhibits 104 and 105; I have reserved ruling as to them. Exhibits 104 and 105 are admitted.

Mr. Etter: An objection.

The Court: Objection is overruled.

(Testimony of F. C. Greene.)

Mr. Etter: And exception.

(Whereupon, Plaintiff's Exhibits No. 104 and 105 for identification were admitted in evidence.)

Mr. Erickson: That's all for Mr. Greene?

Mr. Etter: That's all. [868]

* * *

(Whereupon, there being no further questions, the witness was excused.)

ELWOOD V. DENNEY

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. My name is Elwood V. Denney. I'm an investigator with the Securities and Exchange Commission, and have been continuously for the last thirteen years. I'm attached to the Seattle Regional Office. I'm also a licensed public accountant in the state of Washington. My experience prior to my employment with the S.E.C. was about eight years in the securities business, and a few years prior to that with one of the commercial banks in Seattle.

Q. Have you ever qualified or testified as an accountant in Federal Court?

(Testimony of Elwood V. Denney.)

A. Yes, I have. I've qualified previously in this court, also in the Western District of Washington, and in the State of Idaho.

Q. In the District Court, the Federal District Court, in Idaho? [869] A. Right.

Q. In connection with several cases?

A. Yes, several cases.

Q. And in your work with the Securities and Exchange Commission what does that work consist of?

A. Well, the work is of various types. Some of it is administrative work, giving information about the acts which we administer, principally the Securities Act of 1933, and making investigations of cases similar to this.

Q. What is your work with regard to brokerage houses?

A. The Commission is charged under the Securities and Exchange Act of 1934 with making inspections of brokerage houses, making inspections in securities over the counter as well as on stock exchanges, and looking into the financial condition of brokerage houses principally by means of annual financial reports. I've done work in all those connections for the Commission.

Q. And in your investigative work do you examine the books and records of corporations?

A. Yes, when necessary in investigations we go to the books and records of the broker dealers in securities for the information we need.

(Testimony of Elwood V. Denney.)

Q. I mentioned corporations.

A. Yes, and also corporations, such as Lucky Friday Extension and Pilot Silver Lead. [870]

Q. Now, in connection with this case did you make an examination of the corporate records of those two companies you just mentioned?

A. Yes, I made an inspection and obtained the records such as were available for these two companies.

Q. When did you commence this examination?

A. This investigation commenced early in 1947, about February or March, 1947.

Q. Are you referring now on that date to the examination of these particular companies?

A. The investigation originally started in connection with Independence Lead Mines Company, which has been mentioned here. The Securities Exchange Act requires all companies whose stock is listed on a stock exchange in the United States to file annual reports with the Commission, and since Independence Lead is listed and registered on the Spokane Stock Exchange, it was and has been required to file these reports, and those reports according to law must be in within 120 days after the end of the year. In the case of Independence Lead those reports should have been filed by April 30 of each year. The last report prior to this investigation was filed early in 1943 for the year of 1942. Up to 1947, that is, the late 1946 and early 1947, annual reports had not been filed

(Testimony of Elwood V. Denney.)

for 1943, 1944 and 1945. When the inspection started the report for 1946 was not yet [871] due.

Q. And when did you begin your investigation of these two companies?

A. These two companies? Well——

Q. I refer to the Pilot and the Extension.

* * *

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Denney, I think at the recess I was asking you questions concerning the beginning of this investigation in [872] regard to Pilot and Extension. I'll ask you, was there or was there not any complaint received from any party at the beginning of this investigation on these two companies?

A. No.

Q. And what was the commencement of this investigation?

A. During our inquiry into Independence Lead, we discovered that funds of Pilot and Lucky Friday Extension had been transferred to Montana Leasing Company.

Q. And your inquiry into Independence was about March, 1947, as shown by the testimony read yesterday? A. Yes.

Q. And about what date was this discovery made?

A. It was made I believe in March, 1947.

(Testimony of Elwood V. Denney.)

Q. About the end of March?

A. I don't recall the exact date.

Q. Now, what examination of these companies' records did you make?

A. The Lucky Friday Extension and the Pilot Silver Lead had bank statements, cancelled checks, duplicate deposit slips, cancelled stock certificates, the stubs for stock certificates issued, and stockholders' ledgers. I examined those records.

Q. And did you from those records prepare a schedule showing the original issue of the Lucky Friday Extension Mining Company shares? [873]

A. Yes.

Q. Did you also prepare a schedule showing the summary of the funds deposited in the Lucky Friday Extension Mining Company bank account at the Idaho First National Bank in Wallace?

A. Yes.

Q. Did you also prepare from the company records a summary of the checks drawn on and other charges to this Extension bank account for the period of July 23, 1945, to March 13, 1947?

A. Yes.

Q. Did you also prepare a summary of checks drawn on the bank account of Lucky Friday Extension Mining Company from July 23, 1945, to March 13, 1947, indicating a breakdown of the checks to Montana Leasing, checks to Lexington Silver Lead Mines, Inc., and checks made out to Lucky Friday Silver Lead Mines Company, the Big Friday?

(Testimony of Elwood V. Denney.)

A. Yes.

Q. Those last two summaries I mentioned were prepared as one exhibit, were they not?

A. Yes, they're stapled together.

Q. Did you also prepare a list of the checks drawn on the Extension bank account showing the check number where indicated, the date and amount, and the name of the payee, and the total amount?

A. Yes; that list also includes bank service charges.

(Whereupon, schedule of original issue of Extension stock was marked Plaintiff's Exhibit No. 106 for identification.)

(Whereupon, schedule of deposits to bank account of Extension Co. was marked Plaintiff's Exhibit No. 107 for identification.)

(Whereupon, summary of checks and bank charges on Extension bank account was marked Plaintiff's Exhibit No. 108 for identification.)

(Whereupon, list of checks drawn on Extension bank account was marked Plaintiff's Exhibit No. 109 for identification.)

Q. Did you cause these schedules of yours to be prepared in typewritten form?

A. Yes. I first prepared them in my own handwriting, and they were subsequently typed, and then I checked them back against my typewritten schedule.

(Testimony of Elwood V. Denney.)

Q. I'll hand you Plaintiff's 106, 107, 108 and 109, and ask you to identify each of those, please, by number. I think I'd identify each one separately.

A. 106 is a typewritten copy of my schedule, 107 is also a typewritten copy of my schedule, 108—

Q. Identify what schedule, please.

A. 106 shows the original issuance of Lucky Friday Extension Mining Company shares. 107 shows a summary of deposits into the bank account of Lucky Friday Extension at the [875] Idaho First National Bank at Wallace. 108 is a summary of checks and other charges to the bank account of Lucky Friday Extension at the Idaho First National Bank, Wallace, together with a breakdown of checks to Montana Leasing, to Lexington Silver Lead, and to the Big Friday. 109 is a chronological list of checks drawn on the Lucky Friday Extension bank account from July 23, 1945, to January 18, 1947.

Mr. Stocking: At this time we'll offer 106, 107, 108 and 109.

Mr. Emigh: We'd like to conduct an examination preliminary to objections, if we decide to make objections.

The Court: Surely.

Voir Dire Examination

By Mr. Emigh:

Q. Mr. Denney, Plaintiff's Exhibit 106 purports to be a summary of the original issue of the Lucky

(Testimony of Elwood V. Denney.)

Friday Extension Mining Company shares. Is this based entirely upon exhibits which are now introduced in evidence? A. Yes.

Q. All of the stock books of this corporation have been introduced in evidence?

A. This was prepared from the stock certificate stubs of Lucky Friday Extension.

Q. Introduced in evidence? A. Yes. [876]

Mr. Stocking: Now, just a moment. I don't think the stock certificate stubs were introduced in evidence. They were identified.

Mr. Emigh: That doesn't make them part of the record.

Q. (By Mr. Emigh): Calling your attention to Plaintiff's Exhibit 107 I'll ask you if that summary includes all funds deposited in the bank account of the Lucy Friday, I believe that's what it purports to show—— A. Yes.

Q. ——during the period of your examination, covered by your examination?

A. This is the summary of the deposits found in the records available to me for Lucky Friday Extension.

Q. Well, what records were available to you?

A. The bank statements and the bank deposit slips.

Q. Covering what periods?

A. During the period of July 23, 1945, to January 3, 1947.

(Testimony of Elwood V. Denney.)

Q. And those records I believe are in evidence here? A. They are.

Q. Now, you have plaintiff's Exhibit 108, which purports to be a summary of checks on and other charges to the bank account of Lucky Friday Extension Mining Company, July 23, 1945, to March 13, 1947. Now, in preparing that did you have all of the checks which were drawn during that period?

A. Yes.

Q. All of the checks, and these checks balanced and checked with the bank account? A. Yes.

Q. And you had the bank account?

A. Yes, and they're in evidence.

Q. And they're in evidence?

A. And 108 is a summary of the list of checks found on 109.

Q. And did that list account for all withdrawals shown on the bank account? A. Yes.

Q. Now, you purport to have—that was 108—109, is that a breakdown of the checks included in the summary, Plaintiff's Exhibit 108?

A. Yes. 109 is a list of the actual checks drawn and paid through the bank, together with service charges by the bank. 108 is a summary of that list for the use of the jury.

Q. And you found no missing checks in connection with that examination?

A. The checks were accounted for.

Q. The checks were accounted for?

A. And are in evidence.

(Testimony of Elwood V. Denney.)

Q. Then it would be your testimony in connection with these exhibits 106 to 109 that the records of the Lucky Friday [878] Extension Company did show all funds deposited and withdrawn, and the persons to whom those withdrawal were paid, during that period, is that right?

A. The checks so indicate.

Q. To make the record clear, that is a complete record, those four exhibits make a complete record of these transactions, is that correct?

A. Yes. The first one makes a complete record of original issuance of Lucky Friday stock. 107 is a complete record of funds that went into the bank account of Lucky Friday Extension, and 108 and 109 account for the withdrawal of those funds.

Q. Now, one more question, I believe, Mr. Denney; these records were made available to you by whom?

A. They were made available to me by Mr. Keane and Mrs. Vermillion.

Q. Yes, and they were officers in charge of the records of the Lucky Friday Extension Mining Company?

A. The records were in Mr. Keane's office.

Q. Yes, and he had had charge of those, from what your investigation disclosed, at all times?

A. As far as I know the records were continuously in his office until we got them—no, I'll change that—some of the records were turned over to Mr. Allen later on, that is, the stock records, stock

(Testimony of Elwood V. Denney.)

certificate stubs, and the [879] stockholders' ledgers which were subpoenaed in connection with our investigation, are still in Mr. Allen's possession as far as I know. We've never asked for them.

Q. Well, any of these records that were there, were they partial records? That is, did you find on any occasion just a portion of the records, and not complete records? To refresh your memory, did you find any cancelled checks of the Delaware Company?

A. Well, the Delaware is not in these exhibits. These exhibits relate to Pilot and Lucky Friday Extension.

Mr. Emigh: I think there's no objection.

The Court: There's no objection to exhibits 106, 107, 108 and 109?

Mr. Emigh: I beg your pardon, your Honor; I think our statement is that there's no objection to this going in as a summary, but subject to our objections made to any specific exhibit which might be reflected therein. We don't want to waive that objection.

The Court: All right; now I am interested in this, and that is whether or not all of these records have been more than identified, particularly in view of Mr. Denney's statement that some of these records have been returned to Mr. Allen. What is the case?

Mr. Stocking: The stock certificate stubs were the ones I think that he referred to that were in

(Testimony of Elwood V. Denney.)

evidence, and [880] I corrected him and said that they were only identified. It's my understanding of the law that that was sufficient.

The Court: So there will be no misunderstanding, I'm correct then in my recollection that some of these exhibits had not been admitted?

Mr. Stocking: That's correct, your Honor; the stock certificate stubs have not been admitted; they're here and marked.

The Court: You may ask your witness, then, as to that, because he has them now admitted, and you have them not admitted.

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Denney, were you correct in your statement that the Extension stock certificate stubs were admitted in evidence?

A. Yes, I corrected it upon information from Mr. Stocking, the exhibits were offered but not admitted, that is, the stubs.

Q. They were identified here as exhibits?

A. That's right.

The Court: Exhibits 106, 107, 108 and 109 admitted, no objection.

(Whereupon, Plaintiff's Exhibits No. 106, 107, 108 and 109 for identification were admitted in evidence.)

The Court: It's understood that the fact that

(Testimony of Elwood V. Denney.)

the [881] defense has not objected to the admission of these exhibits in no wise constitutes a waiver of objections to any exhibits referred to either directly or indirectly by such exhibits 106 to 109 inclusive.

Mr. Stocking: May I refer briefly to some of these exhibits?

The Court: You may.

(Whereupon, Mr. Stocking read portions of Exhibits 107 and 108 to the jury.)

Q. (By Mr. Stocking): Now, did you prepare similar summaries with regard to the records of the Pilot Silver Lead Mines, Inc.? A. Yes.

(Whereupon, schedule of original issue of Pilot stock was marked Plaintiff's Exhibit No. 110 for identification.)

(Whereupon, schedule of deposits to bank account of Pilot was marked Plaintiff's Exhibit No. 111 for identification.)

(Whereupon, summary of checks and bank charges on Pilot account was marked Plaintiff's Exhibit No. 112 for identification.)

(Whereupon, list of checks drawn on Pilot bank account was marked Plaintiff's Exhibit No. 113 for identification.)

Q. I'll hand you Plaintiff's for identification 110, 111, 112 and 113, and ask you to identify each of those. [882]

(Testimony of Elwood V. Denney.)

A. Number 110 shows the original issuance of Pilot shares. Number 111 is a summary of deposits of funds in the Pilot bank account at the Idaho First National Bank from May 22, 1946, to February 26, 1947. Number 112 is a summary of checks drawn on and other charges to the bank account of Pilot at the Idaho First National from May 22, 1946, to February 26, 1947. Number 113 is a chronological list of checks drawn on the Pilot bank account at the Idaho First National, together with bank service charges.

Q. And these are the summaries which were prepared by you? A. Yes.

Mr. Stocking: We'll offer 110, 111, 112 and 113.

Voir Dire Examination

By Mr. Emigh:

Q. Mr. Denney, Plaintiff's Exhibit 110, which purports to be original issue of the Pilot Silver Lead Mines, Inc., you may state if all of the records which you examined in preparing this schedule have been admitted to evidence in this case?

A. I don't recall if the stock certificate stubs are actually admitted or not.

Mr. Stocking: I believe they're just identified.

Mr. Emigh: They were identified?

Mr. Stocking: Yes.

Mr. Emigh: Were they admitted?

Mr. Stocking: No, not admitted; identified.

Q. (By Mr. Emigh): Then the stock certificate

(Testimony of Elwood V. Denney.)

stubs that you examined were not admitted in evidence here? A. I'm so advised.

Q. They were produced in court, however?

A. Yes, they are in court, and they were used by me in the preparation of this schedule.

Q. And in relation to Plaintiff's Exhibit 111, which is a summary of deposit of funds in the bank account of the Pilot Silver Lead from May 22, 1946, to February 26, 1947, I'll ask you if all of the records from which this schedule was prepared are in evidence here in this case? A. Yes.

Q. And in relation to Plaintiff's Exhibit 112, which purports to be a summary of checks drawn and other charges to the bank account of the Pilot Silver Lead Mines, Inc., I'll ask you if the records upon which this schedule is made are all admitted in evidence?

A. The checks as to 112 and 113 are in evidence.

Q. And was that all the checks of this corporation which you found?

A. Yes, those were all of the checks and bank debits.

Q. And did you find that there were any missing checks?

A. I don't recall having found any missing checks.

Q. Would you say you did or didn't?

A. They were all there, as I recall. [884]

Q. Well, then, there weren't any missing checks, that's your answer now?

(Testimony of Elwood V. Denney.)

A. That's right, there were none missing that I recall.

Q. And is it true that all of the checks drawn on the bank account of the Pilot Silver Lead Mines as reflected by your schedule 113 are in evidence?

A. Yes.

Mr. Emigh: We have no objections, may it please the court, to these exhibits, reserving, however, our objections to the exhibits of which these exhibits purport to be a compilation or a schedule. We do not wish to waive our objections to the original exhibits.

The Court: You have offered these, have you, Mr. Stocking?

Mr. Stocking: Yes, I have offered these.

The Court: Exhibits 110, 111, 112 and 113 are admitted, no objection, but the fact that the defense has not objected to these exhibits in no wise constitutes a waiver of objections heretofore made to exhibits referred to by these four exhibits.

(Whereupon, Plaintiff's Exhibits No. 110, 111, 112 and 113 for identification were admitted in evidence.)

(Whereupon, Mr. Stocking read portions of Plaintiff's Exhibits 111 and 112 to the jury.)

(Testimony of Elwood V. Denney.)

Direct Examination

(Continued)

By Mr. Stocking: .

Q. Now, Mr. Denney, in connection with the exhibits reflecting the issuance, the original issuance of stock, did you have occasion to determine who received the proceeds from that stock when it was sold by brokers? A. Yes.

Q. And what investigation did you make concerning the stock of both Extension and Pilot?

A. To determine what disposition was made of the Lucky Friday Extension stock issued to J. V. Grismer, certificate number 14 for 1,229,700 shares, certificate 15 for 300,000 shares issued to Keane, and certificate 16 for 200,000 shares issued to Elmer Johnston, I went to——

The Court: How much was that to Elmer Johnston?

A. Number 16, 200,000 shares; I called at the brokerage houses in Spokane and Wallace to check their records.

Q. What records did you check there?

A. I checked their purchases and sales records, their so-called in and out record sheets, which show certificates coming into the office and the same certificates going out of the office. I checked the individual account cards, and the checks issued by these brokers.

Q. And did you determine whether or not any of that stock of Extension, stock on those certificates

(Testimony of Elwood V. Denney.)

14 and 15, were sold by the defendant [886] J. A. Allen?

Mr. Emigh: Now just a minute before you answer that; have you finished your question?

Mr. Stocking: Yes.

Mr. Emigh: To which, may it please the Court, we object on the ground and for the reason that this is invading the province of the jury; this is the very thing the jury has got to determine from the exhibits in this case; that this evidence calls for a conclusion of the witness; it is not proper evidence for the purpose of producing summaries to save examination of a large number of exhibits; that this is hearsay, incompetent, irrelevant and immaterial and based on hearsay evidence, and calls for a highly prejudicial statement from this witness without a proper foundation being laid.

The Court: I think his answer is preliminary; can it not be answered yes or no?

Mr. Emigh: I beg your pardon; that's just exactly the thing we want to guard against, because we can't strike that answer out or eliminate it.

Mr. Stocking: I'll reframe the question.

Q. (By Mr. Stocking): Did you determine whether or not any of the stock transferred from certificate number 15 for 300,000 shares issued to F. C. Keane on July 6, 1945, for legal services, was sold by the defendant Allen? Just answer that yes or no. [887] A. Yes.

(Testimony of Elwood V. Denney.)

Q. And did you make up a schedule tracing the stock certificates? A. Yes.

Q. Which were so sold? A. Yes.

(Whereupon, summary of sales by Allen of Extension stock from certificate 15 was marked Plaintiff's Exhibit No. 114 for identification.)

The Court: It is now 12 o'clock. The jury should be excused until 1:30. The jury is excused until 1:30. The jury will remember the admonition of the court to all phases of this case and all persons connected with it and as to all evidence. The jury is excused until 1:30. The trial is still in session.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: By reason of certain matters that the court felt needed attention, the attorneys trying this case were deprived of a total of twenty minutes this morning. It's now 12 o'clock. I'm a little interested in an outline of such exhibits as you expect to put in by Mr. Denney, and I can discuss them a little more freely in the absence of the jury. Apparently you have a schedule as to [888] Mr. Keane's original certificate 15. Now, what other schedules of this witness do you expect to put in evidence?

Mr. Stocking: A schedule for certificate 14,

(Testimony of Elwood V. Denney.)

that's the J. V. Grismer Extension stock, 1,229,700 shares and—did we have one for 16?

Mr. Denney: No.

Mr. Stocking: We have Pilot——

The Court: You have them for 14 and 15. What about 16?

Mr. Stocking: Just a minute until I confer. I didn't find any for 16. You mentioned 16.

Mr. Denney: No, there's none for 16.

The Court: All right, we'll go somewhere else. What else do you have?

Mr. Stocking: Pilot, transferred from certificates 13 and 14, which was issued in the name of F. C. Keane, issued on the purchase of the Cincinnati and Phelan groups of mining claims——

The Court: I want all of the schedules, whether they apply to the Pilot or Extension or not, that you're expecting to put in by Mr. Denney.

Mr. Stocking: Yes. I'll say to the Court that we're eliminating—I think that's all of the schedules we expect to put in that apply to Extension or Pilot, is [889] it not, Mr. Denney? We'll put in without a schedule testimony regarding 16. That was the stock that went to Mr. Halin.

The Court: Mr. Who?

Mr. Stocking: Mr. Halin, showing the source of Mr. Halin's stock that was sold out. Then we expect to put in through Mr. Denney a summary of the deposits in the Montana Leasing Company.

The Court: Summary of what?

(Testimony of Elwood V. Denney.)

Mr. Stocking: Of the deposits in the Montana, showing the source of the deposits from the deposit slips; it's really a summary of the deposit slips in the Montana Leasing Company, reflection of the deposit slips and the bank statements; a summary as to checks signed by J. A. Allen on Montana Leasing Company and Lexington Silver Mines, Inc., giving the date, amount and payee, and total by months for the months of July, 1945, through August, 1946, and a total of all of those checks showing J. A. Allen's expenditures from Montana Leasing Company by check during that period of time; a summary of the bank statements of Montana Leasing Company showing the condition of the bank account at various times that Lucky Friday Extension Mining Company and Pilot Silver Lead Mines, Inc. deposits were made on the dates of the deposits, showing the number of overdrafts that existed or the low balances [890] that existed, and then we have one more schedule which was prepared as a result of our controversy over the Randall exhibit identified by defendants, and this is a breakdown of the payments which were made on the Randall exhibit, which were shown as for the years 1943, 1944 and 1945. It shows a breakdown by——

The Court: Of what?

Mr. Stocking: By dates of the Independence proceeds.

The Court: Independence Lead?

Mr. Stocking: Yes, from Independence to Mon-

(Testimony of Elwood V. Denney.)

tana Leasing. That came up yesterday in connection with Mr. Randall's audit, and I had stated that we would obtain the figures for this breakdown for Mr. Etter.

Mr. Emigh: Mr. Stocking, are you through with your statement?

Mr. Stocking: Just a minute until I confer. I don't believe I have overlooked any.

The Court: All right. Now, as I understand it from what's been offered, Mr. Emigh, you're going to object to certain of these schedules. I'm not requiring you to give me a preview of what your objects will be. If you do do it, it would save some time, perhaps, if I just merely know. You indicated that as to certificates 14 and 15 of the Extension that you would object on the [891] ground that the summary was substituting work by the witness which the jury should do?

Mr. Emigh: That's true, we'll make that objection to any exhibit which we believe has that effect, and any exhibit that we think is not based upon a fair interpretation of the record we'll object to, and an exhibit which is not a reflection of the matters in record we may object to.

The Court: As to these that have been suggested, and again you're not required to anticipate at all, if you wish to, you may, if you're going to object to all of them, you may say if you wish. If you know that you're not going to object to some of them, you may say that if you wish, or you may

(Testimony of Elwood V. Denney.)

hold your peace in whole or in part as you choose.

Mr. Emigh: I believe that's going to have to be largely determined by the exhibits and the evidence. We haven't had an examination of all of them.

The Court: I may say this for the benefit of both sides, that when I try a case without a jury I frequently permit summaries to be put in evidence, not as a substitute for evidence, but it's been my general theory in trying cases that a jury shouldn't be given a harder task than a judge has, that ordinarily a jury should have the same aids that a judge has. I say ordinarily, because [892] there are times when the judge can have an aid which the jury can't have. Since the judge has to look at an exhibit, whether it's admitted or not, to decide whether it be admitted, the courts have had to adopt the synthetic idea that judges cannot be prejudiced by what they know but which are not admitted in evidence. The jury can't be allowed to see something until it's been ruled that it's not prejudicial, or at least it's not inadmissible. If summaries are admitted the jury will be told that the summaries are for the purpose of giving them an opportunity to understand the evidence, but that they're not bound or controlled by the summaries. I usually tell the jury that they're not even bound to look at the summaries. I wouldn't be if I were trying this case without a jury. I'd have the privilege of going to original sources if I chose. It's quite un-

(Testimony of Elwood V. Denney.)

likely that I would refuse to read the summary. Sometimes I've read summaries and have gone to the original sources and have disagreed with the one who made the summary, but I think you gentlemen have a fair summary of the idea I have as to summaries

Mr. Stocking: One thing, if the Court please; from something that the court said the other day in ruling on our offer in evidence of some of those bulky exhibits; it was my conclusion, and I thought that was the law also, that an expert witness is permitted to make a summary of [893] corporate records which have been brought into the courtroom and identified and are available for inspection.

The Court: Well, counsel, I might say that where a jury isn't obligated to use a summary is when the summary is of exhibits which are actually in evidence. It's not obligated to.

Mr. Stocking: I was thinking about the stock stubs.

The Court: Where one has examined a great mass of material, figures or documents, and where such documents cannot with practicality be examined and analyzed by a jury, an expert is permitted to testify, and the jury can give that amount of weight or no weight to the expert's testimony that the jury thinks he is entitled to receive, and if a cross-examiner wishes to put in evidence the original sources, ordinarily the court would not prevent the cross-examiner putting in such evidence.

(Testimony of Elwood V. Denney.)

I doubt very much that any good will come from putting in what would appear to me to be several thousand checks. We'll be recessed until 1:30.

(Whereupon, at 12:15 o'clock pm. the Court took a recess in this cause until 1:30 o'clock p.m.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.) [894]

Mr. Etter: If the Court please, during part of the cross-examination of one witness by the counsel for the defendant, an exhibit was marked "L", the same being an audit of the Independence Lead Mines Company prepared by Mr. L. J. Randall, certified public accountant of Wallace, Idaho. An objection was at that time made by counsel for the government, and since the offer of the exhibit the government and the defendant have stipulated that by the addition of certain figures that appear upon the first two sheets attached to the back of the Independence audit, plus another sheet which is marked with a red pencil, marked "copy" attached likewise to the back of the audit, that the exhibit may be admitted into evidence, with the idea in mind that consideration of the exhibit marked "L" shall be considered not only in the audit itself, but by reference and in view of the other three sheets which have been clipped thereto.

(Testimony of Elwood V. Denney.)

Mr. Stocking: That's agreeable; this is to avoid the witness Randall having to return.

The Court: Exhibit L as now supplemented is admitted in evidence by stipulation of the defense and the government.

(Whereupon, Defendant's Exhibit L for identification was admitted in evidence.)

The Court: You may proceed. [895]

(Whereupon, Audit report on Extension Company was marked Defendant's Exhibit T for identification.)

(Whereupon, Audit report on Pilot Company was marked Defendant's Exhibit U for identification.)

Mr. Etter: If it please the Court, it has likewise been stipulated between counsel for the government and counsel for the defendant that the defendant's identifications T and U may be by stipulation admitted into the evidence without further identification or proceedings to establish materiality or otherwise.

The Court: What are those exhibits?

Mr. Etter: Defendant's T being an audit report on the Lucky Friday Extension Mining Company, Wallace, Idaho, prepared by L. J. Randall, certified public accountant, Wallace, Idaho, and covering the time of May 28, 1945, to June 30, 1947. Defendant's Exhibit U is an audit report of the Pilot Silver

(Testimony of Elwood V. Denney.)

Lead Mines, Inc., Wallace, Idaho, prepared by L. J. Randall, a certified public accountant of Wallace, Idaho, and covering the period October 19, 1945, to June 30, 1947.

Mr. Stocking: That's agreeable.

The Court: Exhibits T and U by stipulation of both sides are admitted in evidence.

(Whereupon, Defendant's Exhibits T and U for identification were [896] admitted in evidence.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Denney, with reference to your testimony regarding certificate number 15 of Lucky Friday Extension stock and the schedule you prepared to show certificates issued out of it, I'll hand you Plaintiff's Exhibit 114 for identification and ask you to identify it, please.

A. I prepared the original to this exhibit; in other words, this is a typewritten copy of my handwritten exhibit.

Q. And you checked it? A. I did.

Q. Now, what is shown on the far left side of Exhibit 114?

A. This exhibit shows sales by J. A. Allen—

Mr. Emigh: Just a minute. We will object. The exhibit is the best evidence when properly identified to go in. I ask that the answer be stricken.

(Testimony of Elwood V. Denney.)

The Court: Overruled. He may state it briefly enough to advise the court as to the composition of the exhibit.

Mr. Emigh: Exception.

Q. (By Mr. Stocking): Go ahead as you were.

A. This exhibit shows the sales by J. A. Allen of Extension stock transferred from certificate number 15, which was for 300,000 shares issued to Keane for legal services. The far left hand column over here shows that certificate [897] 1083 was originated by transfer from certificate——

The Court: Just a moment. I'm not permitting the witness to give the contents of the exhibit. You asked him as to what a certain column——

Q. Without designating the certificate number, just state what that far column shows, please.

Mr. Emigh: In view of the Court's statement now, we ask that the entire answer of the witness be stricken.

The Court: I'll strike it all, and you may proceed again. He may give a general statement of what the column shows.

A. The column shows a certificate transferred from certificate 15.

Mr. Stocking: We'll offer in evidence Plaintiff's 114.

Mr. Emigh: To which, may it please the Court, the defendant makes no objection if the purpose of the exhibit is confined to the establishment of a summary of the things which appear thereon, and

(Testimony of Elwood V. Denney.)

that the same be not considered for any purpose save and except to show a tracing of the origin, source and course and culmination of the particular stock as in there set forth. In other words, only as a summary of exhibits before the Court.

The Court: Satisfactory? [898]

Mr. Stocking: That's satisfactory.

Mr. Emigh: Just a minute; may I complete my statement?

Mr. Stocking: Yes.

Mr. Emigh: And that the defendant expressly reserves from this stipulation any exceptions he may have to the competency, relevancy or identification or otherwise made in the record as to the exhibits which purport to go to make up this summary or schedule.

The Court: Are you satisfied, Mr. Stocking?

Mr. Stocking: That I think is satisfactory, if the Court please.

The Court: Exhibit 114 admitted, no objection, the admission being for the purpose outlined by defense counsel.

(Whereupon, Plaintiff's Exhibit No. 114 for identification was admitted in evidence.)

(Whereupon, record of J. A. Allen account, Pennaluna Company, was marked Plaintiff's Exhibit No. 115 for identification.)

Q. (By Mr. Stocking): Mr. Denney, I'll hand you for identification what has been marked as

(Testimony of Elwood V. Denney.)

Plaintiff's proposed exhibit number 115, and ask if you can identify the records in that exhibit? I'll add to that question, as being some of the records which you examined during the course of your [899] investigation?

A. Yes, I examined these records in the course of my investigation, and used them.

Q. And where did you examine them?

A. I examined them at the office of Pennaluna & Company at Wallace.

Q. And what records are in that exhibit?

A. This card is the account of James A. Allen with Pennaluna and Company from August 4, 1947, to January 10, 1948. The checks are Pennaluna and Company checks payable to——

Mr. Emigh: Now just a minute——

A. ——Mr. Allen.

Mr. Emigh: We object to the witness stating what the exhibits are until they have been properly identified and admitted in evidence.

The Court: Well, that's a brief description for understanding. The objection is overruled.

Mr. Emigh: Exception.

Q. (By Mr. Stocking): What other material makes up that exhibit?

A. These confirmation statements are Pennaluna and Company confirmations to Mr. Allen, and the two large sheets are the so-called in and out record of Pennaluna and Company.

Q. Now, Mr. Denney, did you prepare a schedule

(Testimony of Elwood V. Denney.)

as to the stock—as to certain stock certificates transferred from [900] certificate 14 of Extension stock?

A. Yes.

(Whereupon, schedule of sales by Allen of Extension stock from certificate 14 was marked Plaintiff's Exhibit No. 116 for identification.)

Q. I hand you Plaintiff's 116 for identification and ask you what that is?

A. This is the typewritten copy of a schedule prepared by me which I checked, which shows sales by James A. Allen——

Mr. Emigh: Now just a minute——

The Court: Overruled.

Mr. Emigh: ——to which the defendant objects on the grounds and for the reason that this is not a proper way to identify an exhibit, by putting in the contents of the exhibit and asking if it's true.

Mr. Stocking: This is the heading.

Mr. Emigh: The proper foundation has not been laid, and that the testimony invades the province of the jury in determining what the exhibit constitutes.

The Court: I'm inclined to think counsel is right as to exhibit 116. I think it should be very much——well——

Mr. Stocking: I didn't quite hear the last.

The Court: I'll strike his answer. The jury will disregard it. The identification should be shorter and I should know where it came from first. [901]

(Testimony of Elwood V. Denney.)

Mr. Stocking: I think he testified it was prepared from his schedule, typed, and checked by him.

The Court: Yes, but from where?

Q. (By Mr. Stocking): From what sources did you prepare the information which appears on that exhibit?

A. The information as to the issuance of the stock certificates came from the records of Lucky Friday Extension, and the information as to the sales, the purchases by the brokers, came from the records of the brokers.

Q. What brokers were those?

A. There are three brokers; E. J. Gibson & Company, Pennaluna & Company, and Standard Securities Corporation.

Q. And does that purport to indicate transfers from certificate 14? A. Yes.

Mr. Stocking: We'll offer this exhibit 116.

Mr. Emigh: May we inquire briefly, your Honor?

The Court. Surely.

Voir Dire Examination

By Mr. Emigh:

Q. The exhibit 116 which you refer to in part you identified as being taken from records disclosed on Plaintiff's Exhibit 115, is that true?

A. Yes.

Q. And that has not yet been admitted in evidence, is that correct? [902] A. Yes.

Mr. Emigh: Well, I think we're going to object at this stage on the ground and for the reason that

(Testimony of Elwood V. Denney.)

the tabulation is not wholly based upon matter of record in this case, incompetent, irrelevant and immaterial, and not properly identified, and incompetent for any purpose, not the best evidence.

Mr. Stocking: The records have been identified as the records that he used of Pennaluna and Company in making his investigation and in connection with his tracing of the stock certificates.

Mr. Emigh: We submit the rule in the Federal court is that they must not only be identified, but if required on objection, must be placed in evidence.

The Court: You say you submit that's according to the law of the Federal court. Can you cite me a recognized case to that effect?

Mr. Emigh: I believe so, if you'll give us some time, if I didn't leave them at the room.

The Court: Well, I'll take under reservation and ruling the exhibit 116. You may proceed.

Mr. Emigh: The two cases, may it please the Court, we refer to are Leavy vs. United States, Circuit Court of Appeals, Ninth Circuit, 92 F. 2d 688, certiorari denied, and another one is Pochet vs. U. S., a Minnesota case, [903] which I think would be in the Seventh Circuit, 68 F. 2d 205.

The Court: I'd like to see 92 F. 2d. You may proceed, counsel.

(Whereupon, schedule of sales by Allen of Pilot stock from certificates 13 and 14 was marked Plaintiff's Exhibit No. 117 for identification.)

(Testimony of Elwood V. Denney.) .

The Court: I take it that you're referring to that portion of the syllabus numbered 12, and the accompanying part of the text?

Mr. Emigh: I can't remember the number, your Honor, but it's pertinent to this point.

The Court: Well, I don't find in this case, counsel, what I think you are suggesting. The syllabus reads as follows: "12. Testimony of accountant who used summaries which he had made of records of corporation was properly admitted where the records themselves were actually introduced in evidence." The court says this: "Such evidence was admissible" citing cases; "The books of account from which the summaries were made were not available for cross-examination. Such is not the case here. Actually, the books were introduced in evidence." The court doesn't say that necessarily the books were introduced in evidence. The court says that in a case where the books of account were not available for cross-examination [904] that a certain rule might hold.

Mr. Emigh: As I understand it, the law is that the summary must be a summary of the evidence, made for the convenience of the witnesses, and something that's not in evidence is not a summary of the evidence.

The Court: Well, counsel, I asked for an authoritative decision.

Mr. Emigh: I believe that is.

The Court: I don't think so, counsel. The point

(Testimony of Elwood V. Denney.)

in this case is that the summary is admissible, in effect, where the books from which the summary was made are available for cross-examination. The court goes further and says that actually the books were introduced in evidence, but it doesn't say necessarily they were introduced in evidence. Now, if you're objecting because exhibit 115 for identification has not been admitted, I'll reserve ruling and see what happens as to that. It may be that your objection will be cured, and it is not necessary to determine an academic question.

Mr. Emigh: I understand then it's not in evidence?

The Court: 115 is not in evidence; 116 I've reserved ruling. However, I'm advising counsel that I am yet to be presented with an authoritative case from the Ninth Circuit which holds that the books must be more than available. [905]

Mr. Emigh: In other words, if we have authority we had better produce them, your Honor?

The Court: Yes.

Mr. Emigh: We'll try to get some.

The Court: All right. The case you've submitted doesn't disagree with what you've said; it's just a little lesser point.

Mr. Emigh: We might be placing too much confidence in the text writer.

The Court: Yes, that may be.

(Testimony of Elwood V. Denney.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Denney, handing you Plaintiff's proposed exhibit 117, can you identify it with respect to the disposition of certain certificates from certificate number 13 of Pilot Silver Lead?

A. Yes.

Q. And did you prepare this exhibit?

A. I prepared the handwritten original from which that was copied.

Q. And did you check this with your original?

A. I did.

Q. And does this purport to indicate the issuance of certain certificates from certificate 13?

A. Yes.

Q. That is of Pilot Silver Lead. [906]

Mr. Emigh: May we have just a moment here?

The Court: Yes.

Voir Dire Examination

By Mr. Emigh:

Q. Mr. Deney, in preparing the schedule, Plaintiff's Exhibit No. 117 for identification, did you use only records which have now been introduced in evidence in this case?

A. I used only the records of Pilot Silver Lead and the records of the brokers named hereon.

Q. Will you answer my question, please?

A. And the stock certificates of Pilot, if I re-

(Testimony of Elwood V. Denney.)

member correctly, have not been admitted, is that true?

Mr. Stocking: I don't think any stock stubs or certificates other than small groups of them have been admitted; they've all been identified and offered.

A. On the schedule appears two items——

Mr. Stocking: Three, isn't it?

A. ——three items, purchases by Pennaluna and Company from Mr. Allen, which have not—Pennaluna's records have not been admitted.

Mr. Stocking: Have those records been identified?

The Court: Just a moment; let Mr. Emigh conduct the voir dire.

Q. (By Mr. Emigh): I'll ask another question which may clear our position on this: What I'm getting at is, if the jury went to the same trouble you did and examined the [907] exhibits in this case actually introduced in evidence, they wouldn't have sufficient records before them to make the same sort of a summary, would they?

A. You used the word introduced; do you mean admitted?

Q. Introduced is one which is admitted, not identified for admission.

A. No, some of the records of Pennaluna have not been admitted.

Mr. Emigh: Well, we aren't doing this just to take time. It's possible by a short conference here

(Testimony of Elwood V. Denney.)

with Mr. Stocking and with my client and with Mr. Etter we can get past this objection, and save the court some time. We don't want to just make objections.

The Court: All right; it may be that some of the objections if made will be taken care of by later developments, but if you can agree, so be it.

Mr. Emigh: My procedure now is taking a lot of the Court's time and our time that we can possibly avoid.

The Court: Exhibit 117 has not yet been offered, has it?

Mr. Stocking: I think I did offer it.

The Court: Exhibit 117 is now offered, is that it?

Mr. Stocking: It's now offered.

Mr. Emigh: At this point I was inquiring, I will object on the ground and for the reason that the evidence [908] affirmatively shows that the document which is marked Plaintiff's Exhibit 117 for identification purports to be a summary of the evidence in this case for the aid of the jury, and it affirmatively appears from the testimony that the jury couldn't scrutinize the evidence and reach this conclusion. It's incompetent, irrelevant and immaterial, and a proper foundation has not been laid.

The Court: All right; ruling reserved.

Mr. Stocking: I'll ask a question to clear up one point.

(Testimony of Elwood V. Denney.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Denney, in connection with the documents which were necessary for the preparation of Exhibit 117, are all of those documents—have all of those documents been identified here?

A. Yes.

Q. Now, Mr. Denney, did you in your investigation determine from the records of the brokers the source of the J. T. Halin stock which he testified yesterday he purchased from Mr. Keane and Mr. Allen?

A. Yes.

Mr. Emigh: Just a minute; you're just asking about the source?

Mr. Stocking: Yes, and——

The Court: Just a moment; read that question, please.

(Whereupon, the reporter read the last previous question.)

The Court: Which stock was that?

Mr. Stocking: J. T. Halin testified yesterday he purchased 275,000 shares of stock from Mr.——

The Court: At what price?

Mr. Stocking: He said 10 cents a share for 200,000 shares, and 24½ cents a share for 75,000 shares.

The Court: Well, just a moment. My recollection is that Mr. Halin testified that he purchased 200,000 shares at 10 cents a share from Mr. Keane——

(Testimony of Elwood V. Denney.)

Mr. Etter: Correct.

Mr. Stocking: That's what I said.

The Court: —that he made a check for \$13,000, \$7,000 in cash, and he did make a statement that Mr. Allen, as I remember it, at the Davenport Hotel had a connection with the delivery of the stock and the receipt of the money and check.

Mr. Stocking: My reference meant that stock from Mr. Keane and the 75,000 shares from Mr. Allen.

The Court: Well, you had better divide the question, because Mr. Halin stated that the purchase was from Mr. Keane, and he then detailed such connection if any as he said Mr. Allen had with that 200,000 shares. [910]

Mr. Stocking: Yes.

Q. (By Mr. Stocking): I'm referring now to the 200,000 shares Mr. Halin testified he purchased from Mr. Keane, and the 75,000 shares Mr. Halin testified he purchased from Mr. Allen. Did you determine the source of that stock by tracing it?

A. Yes.

Q. And from what certificates did that stock originate?

Mr. Emigh: Now just a moment; to which we object, as it doesn't appear that the witness is testifying from matters of record in this court or matters that have been offered in this court; he's testifying from a summary of some investigation

(Testimony of Elwood V. Denney.)

he made, and it's hearsay as to Allen, secondary evidence, incompetent, irrelevant and immaterial and not the best evidence.

The Court: Is the support for this investigation admitted in evidence?

Mr. Stocking: I'll confine my question then to that stock which was sold by Mr. Halin to Standard Securities Company, Pennaluna and Company, E. J. Gibson and Company, Preston and Raef; I think that covers all of them.

Mr. Emigh: We'll ask that before the witness answers the question, we have one preliminary question.

The Court: Well, maybe we can find out first from [911] Mr. Stocking. Is your question based upon evidence now admitted?

Mr. Stocking: Yes, confined to those four brokers it's based on evidence now admitted with the exception I believe of some of these in and out records which were merely offered for identification.

The Court: Well, it's based on evidence either admitted or——

Mr. Stocking: Or identified, yes.

The Court: In any event, in the courtroom?

Mr. Stocking: Yes.

The Court: Now you may ask the question, counsel, if you want.

Mr. Stocking: Now, Mr. Denney——

The Court: I'm speaking to Mr. Emigh. He is not bound by the question I asked Mr. Stocking.

(Testimony of Elwood V. Denmey.)

Mr. Emigh: No, but I wonder what the state of the record is? Are you offering this?

Mr. Stocking: I'm asking some questions; I'm not going to offer any schedule on this one, because the schedules show the prices at which the stock was sold out by Mr. Halin, and I don't believe that's material. I think the source of the certificates are material.

The Court: All right, you may proceed.

Mr. Stocking: Did you want to ask a preliminary [912] question now, Mr. Emigh?

Mr. Emigh: Go ahead and ask your question.

Mr. Stocking: I think I did.

Mr. Emigh: May I have the question?

Mr. Stocking: I'll ask it again, though.

Q. Can you state from what certificates the stock sold by Mr. Halin through the brokers which I have just named, and I'm referring to the Extension stock concerning which Mr. Halin testified yesterday, what certificates did that stock come from?

Mr. Emigh: To which we object on the ground and for the reason that it manifestly appears from the question of counsel that the witness will base his answer of necessity on records not introduced in evidence, and would draw his conclusions from such records, and manifestly the jury could not reach the same conclusion by examining the records and evidence in this case; incompetent, irrelevant and immaterial, and the proper foundation has not been laid.

(Testimony of Elwood V. Denney.)

Mr. Stocking: I'll ask one more question.

Q. Mr. Denney, are the records upon which you can base your conclusions, have all of those records been identified here? A. Yes.

Q. Now, will you answer the question? [913]

Mr. Emigh: We renew the objection.

The Court: Just a moment, counsel. Previously during the trial of the case I did suggest that some large masses of testimony might not yet be admitted because they were masses. Objection is now made in effect that such identification exhibits are not in evidence. Is there any reason that the Court should have to rule on that point? In other words, I'm not preventing the government from re-offering substantial exhibits which ordinarily take space. I'm going to reserve ruling as to the answer to this question.

Mr. Stocking: If I understand the court correctly, then, we are in a position where we should re-offer these particular exhibits which have been merely identified here as proposed exhibits, and at this time, then, I'll——

Mr. Emigh: I suggested a moment ago, and I re-suggest, that I think if we could go into a huddle here and see what everybody's driving at, we could save some time.

The Court: How much of a huddle would you like?

Mr. Emigh: I think 10 minutes, or 5, or 7.

(Testimony of Elwood V. Denney.)

The Court: You may have ten minutes. The jury will be excused. The Judge will be excused.

(Short recess.)

(Whereupon, the following proceedings were had without [914] the presence of the jury and one alternate juror.)

The Court: If you gentlemen need more time we'll be at ease.

Mr. Emigh: We thought we might streamline this and admit that stock was issued in somebody's name, and after one transfer, three transfers, five transfers, it got into somebody's name who is involved in this case, but I'm not so sure we can do that now.

The Court: Well, of course the government can offer in evidence all of these various documents and papers.

Mr. Emigh: There's very few that aren't in evidence.

Mr. Stocking: Well, all of the stock stubs and the stock certificates themselves, they've been merely identified, a number of these in and out records have merely been identified, and I just hesitate to put all of them in evidence, and of course we aren't assuming that the Court would let them in anyway. That was one of the reasons we had the schedules prepared, to eliminate all that.

Mr. Emigh: Mr. Denney, can you start out from

(Testimony of Elwood V. Denney.)

the exhibits in evidence and trace through to the ultimate——

The Court: Well, I think we might as well call the jury back. You may bring in the jury. The government may [915] proceed.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: You may proceed, Mr. Stocking.

Mr. Emigh: May it please the Court, pardon me for interrupting; we just made a decision that we think we can protect our client's interest by a more expeditious procedure in relation to the exhibits which have been identified and those which have been admitted, and where the source and course of these stocks may be traced through exhibits which have been identified and are here available and have not been admitted, we are going to open the door and assume that that is proper.

The Court: You're withdrawing your objections?

Mr. Emigh: As to the exhibits not being in evidence, provided they have been identified.

The Court: And are here.

Mr. Emigh: And are available for examination if we so wish.

The Court: But the defendant is not withdrawing his objection as to records and documents which are outside the courtroom and have not been identified?

(Testimony of Elwood V. Denney.)

Mr. Emigh: That is right.

The Court: All right, you may proceed.

Mr. Stocking: Before we go any farther with this [916] line, I wanted to mention in connection with Exhibit 117, which I referred to as tracing certificates from Pilot certificate 13, it should have also included Pilot certificate 14.

Q. (By Mr. Stocking): Now, Mr. Denney, you've already testified that you can trace the Halin certificates through the brokers, which I have identified, by means of records which have been identified and are here in court, is that correct?

A. It is.

Q. And now will you tell us the certificate numbers which were the source of the Halin certificates?

A. Mr. Halin got——

Q. Eliminating those that were sold through L. E. Nichols & Company, a small amount, and I think other Nichols company.

A. Mr. Halin got stock from certificate number 15 for 300,000 shares issued to Mr. Keane for legal services. He also got stock which was originally certificate number 16 for 200,000 shares issued to Elmer Johnston for legal services.

Q. And in connection with those, were there any other sources of this stock, any other certificates?

A. Mr. Halin got shares from certificate number 14 issued to J. V. Grismer for mining claims and real estate.

Q. Did you total up the total number of shares

(Testimony of Elwood V. Denney.)

which you have [917] traced from certificate 14 through Mr. Halin's account?

A. Yes. Mr. Halin sold through brokers E. J. Gibson and Company only 40,000 shares, and deposited with Gibson an additional 20,000 shares which were not sold.

Q. And as to certificate 15?

A. Certificate number 15 shows sales by Mr. Halin through Standard Securities, Pennaluna, Gibson, Preston & Raef, of 107,500 shares.

Q. Now as to certificate number 16?

A. Out of certificate number 16 for 200,000 shares issued to Elmer Johnston for legal services, Mr. Halin sold 98,000 shares through Preston & Raef, Gibson, Standard Securities.

Q. And now the testimony by Mr. Johnston shows that his certificate number 16 had been broken up into eight certificates. Do you have in mind those certificate numbers?

A. Yes, they were certificate numbers 19 through 26.

Q. For how many shares apiece?

A. 50,000 shares.

Q. And the testimony also shows through Mr. Johnston that five certificates, 22, 23, 24, 25 and 26, were turned back by him to Mr. Keane or Mr. Allen. What have you to say as to the Halin shares, what was the source of the Halin shares with reference to those five certificates, and referring to the shares

(Testimony of Elwood V. Denney.)

which you have just stated came out of certificate 16? [918]

A. Mr. Halin sold 98,000 shares out of those certificates.

Q. Out of those Johnston certificates?

A. Yes, the breakdown of the Johnston certificates.

Q. Now, Mr. Denney, did you make an examination of the records of the Montana Leasing Company and the Lexington Silver Mines, Inc., its successor? A. Yes.

Q. What records were available for examination?

A. I had the bank statements together with the cancelled checks and some of the duplicate deposit slips; a bunch of duplicate deposit slips were given to me but it proved to be incomplete, in that there were more deposits on the bank statements than in the bunch.

Q. And these records that you have just mentioned are identified as Plaintiff's 9-a—

A. Yes.

Q. —the deposit slips of the Montana Leasing.

The Clerk: That's Exhibit 9-a.

The Court: Is it admitted?

The Clerk: Yes.

Q. And Plaintiff's for identification 8 in the folder 8, marked 8-a to 8-o, are these the bank deposits or a portion of the bank records which were turned over to you? A. Yes. [919]

(Testimony of Elwood V. Denney.)

(Whereupon, summary of deposits in bank account of Montana Leasing and Lexington was marked Plaintiff's Exhibit No. 118 for identification.)

(Whereupon, summary of bank balances in account of Montana Leasing was marked Plaintiff's Exhibit No. 119 for identification.)

Q. (By Mr. Stocking): Did you prepare a summary of the deposits made into Montana Leasing Company and its successor, Lexington Silver Mines, Inc., bank account at the Idaho First National Bank at Wallace, Idaho? A. Yes.

Q. Showing the source of funds when that notation appeared on the deposit slip? A. Yes.

Q. And where no notation appeared on the deposit slip, but the item appeared in the bank statements, leaving the source of funds blank?

A. Yes.

Q. I have misplaced the original, but I'll hand you Plaintiff's 118 for identification and ask you if you can identify that?

A. This is a record by months beginning July 1, 1945, through August, 1946, of deposits of funds into the bank account, its bank account at the Idaho First National, Wallace.

Q. And by "its bank account" you're referring both to the [920] Montana Leasing Company and its successor, Lexington Silver Lead Mines, Inc.?

A. Yes.

(Testimony of Elwood V. Denney.)

Q. Did you also prepare a summary showing the bank balance at specific dates on which funds were deposited in Montana Leasing Company from or by Lucky Friday Extension Mining Company or Pilot Silver Lead Mines, Inc.? A. Yes.

Q. Can you identify Plaintiff's Exhibit 119 as the schedule to which I've just referred?

A. This is a schedule showing balances in the Montana Leasing Company account at the Idaho First National Bank both with funds on hand and overdrafts. The overdrafts appear in red; from July 25, 1945, through May 16, 1946, into which funds of the Lucky Friday Extension were deposited to increase these balances. Also is a like schedule for Montana Leasing Company in that bank account showing the balances on hand and overdrafts in red, and deposits into the account from funds of Pilot Silver Lead.

Q. Now, at how many times during the period covered by Plaintiff's 119 for identification did you discover that deposits were made at the times there were overdrafts in the bank?

Mr. Emigh: Just a minute; to which evidence offered by the government the defendant objects, and objects to [921] the conclusions of the witness, on the grounds and for the reason that the government proved by the witness Keane that where the overdrafts appeared on the record, in truth and fact they were not overdrafts, on account of arrangements made with the bank, that they were

(Testimony of Elwood V. Denney.)

just merely in the nature I believe of loans, that they had made arrangements with the bank.

The Court: Overruled.

Mr. Emigh: So that these did not constitute overdrafts.

Q. (By Mr. Stocking): How many times?

Mr. Emigh: And that this would be going beyond the record in this case, to state his conclusions that they were overdrafts.

The Court: It will be for the jury to determine whether they were overdrafts or not. The witness may answer. Objection overruled.

Mr. Emigh: Exception.

A. (Witness): There were twenty deposits made out of Lucky Friday Extension funds and Pilot funds when there were overdrafts in the Montana Leasing bank account.

Q. And how many times were deposits made when the bank balance was at an amount less than \$1,000?

A. There were seventeen deposits made out of Lucky Friday Extension and Pilot funds when the Montana Leasing bank [922] account showed a balance of less than \$1,000.

Q. From the bank statements contained in Exhibit 8 for identification how did you determine whether or not there appeared to be overdrafts on any particular date?

A. It shows on the bank statement, also in red, when there were overdrafts in the balance column.

(Testimony of Elwood V. Denney.)

Q. And that's a customary practice of banks?

A. Yes.

Q. Now, did you prepare from the Montana Leasing and Lexington Silver Mines company records contained in exhibit 8 for identification and the other exhibits in that folder to which I have just referred, a list of the checks signed by the defendant Allen during the period covering July, 1945, through August, 1946, giving the amount, the name of the payee, and the total amounts by months, and final grand total? A. Yes.

(Whereupon, schedule of checks signed by Allen on Montana Leasing Bank account was marked Plaintiff's Exhibit No. 120 for identification.)

Q. And I'll hand you Plaintiff's 120 for identification, and ask if you can identify that?

A. 120 is a schedule of checks.

Q. Is that the schedule to which I've just referred?

A. Yes, this is the schedule to which you just referred, and [923] is a copy of my handwritten schedule, checked by me, which consists of a list of checks in date order signed by Mr. J. A. Allen.

Q. And those were the checks which were contained in these exhibits 8-a to 8-o inclusive?

A. They are.

Q. That portion of those checks, I should say, which contain Mr. Allen's signature?

(Testimony of Elwood V. Denney.)

A. Yes, the checks listed on the schedule may be found with these cancelled checks.

Mr. Stocking: I now offer 118, 119 and 120.

Voir Dire Examination

By Mr. Emigh:

Q. Mr. Denney, as to Exhibit 118, does the matter contained in that exhibit entirely appear on the records offered or introduced in evidence in this case and which are now available in court?

A. The information in number 118 will be found on——

Q. Just answer yes or no, is all that's necessary. It's all in court?

A. It's in court.

The Court: Admitted or identified?

A. It has been identified, as I understand it, or has it been admitted?

Mr. Stocking: Yes, it has been identified.

Mr. Emigh: The defendant does not object to the [924] exhibit 118, except that defendant reserves all objections heretofore made to any part or portion of the record which constituted a source from which the compilation, Plaintiff's 118, was taken, all of which said objections are reserved at this time.

The Court: But you're not objecting to 118 because the sources are not in evidence?

Mr. Emigh: That's right.

The Court: Exhibit 118 admitted, no objection

(Testimony of Elwood V. Denney.)
to 118. The defendant is not waiving objections made to other exhibits.

(Whereupon, Plaintiff's Exhibit No. 118 for identification was admitted in evidence.)

Q. (By Mr. Emigh): Mr. Denney, as to Plaintiff's Exhibit 119 I'll let you examine that and state whether or not you have already testified on your direct examination as to the contents of that record? A. Yes.

Mr. Emigh: We now object to Plaintiff's Exhibit 119 on the grounds and for the reason that the offering of said exhibit in evidence is repetitious and an attempt to duplicate the testimony on it. Counsel for the government has already elected upon identification of that to enter the contents of that exhibit in the record, and we further reserve the objections, if any, we have taken to [925] the various exhibits which formed the source or sources of the exhibit 119.

The Court: I understand you're not objecting upon the ground that some portion of the sources have only been identified, and not admitted?

Mr. Emigh: That's correct.

The Court: Exhibit 119 is admitted.

Mr. Emigh: May we have an exception.

The Court: Objection overruled.

(Whereupon, Plaintiff's Exhibit No. 119 for identification was admitted in evidence.)

The Court: I might explain this to the jury,

(Testimony of Elwood V. Denney.)

that if there is a summary presented of exhibits which are already in evidence, the jury is privileged to go to the exhibits themselves and make their own summary. The jury is not required to take advantage of a saving of time. If the jury does not wish to use such assistance as the summary is to saving time, the jury is not required to use it. The jury can go through the exhibits themselves, but the exhibit 119 is admitted for such assistance if any as the jury wishes to make of it. You may proceed.

Mr. Stocking: As I understand it, the Court is not indicating that all of the underlying exhibits in these three are actually admitted in evidence?

The Court: Well, I have advised the jury only that [926] where the exhibits themselves are in evidence, that the jury can go through the mass of exhibits instead of using the summary, or they can use the summary to check the exhibits. I think I made myself clear to the jury.

Q. (By Mr. Emigh): As to Plaintiff's Exhibit 120, will you state whether or not all of the sources of the various items purported to be shown on that exhibit are in evidence or identified for introduction in evidence, and present in the court?

A. They are.

Mr. Emigh: Objected to, may it please the Court, on the grounds and for the reason that the same is incompetent, irrelevant and immaterial for any purpose in this case, as it doesn't prove or tend to prove a diversion of funds from either of

(Testimony of Elwood V. Denney.)

the companies, and it's immaterial what disposition occurred to those funds after the same were diverted, and further, in connection with this, we reserve any objections heretofore made to the sources from which said schedule was prepared.

The Court: This objection is not based upon the ground that the sources or some of them have only been identified and not admitted?

Mr. Emigh: That's right.

The Court: Objection overruled.

Mr. Emigh: Exception, please. [927]

The Court: Exhibit 120 admitted.

(Whereupon, Plaintiff's Exhibit No. 120 for identification was admitted in evidence.)

(Whereupon, Mr. Stocking read portions of Exhibits 118, 119 and 120 to the jury.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Denney, are you familiar with the civil action in the District Court of the United States for the Western District of Washington, Northern Division, in civil action No. 714, which is identified further by this document? A. Yes.

(Whereupon, certified copy judgment in case No. 714 was marked Plaintiff's Exhibit No. 121 for identification.)

(Testimony of Elwood V. Denney.)

Q. And did you make an investigation in connection with that civil action?

A. Yes, I was in on the investigation of this matter.

Q. And do you know the defendant who is named in this action as James A. Allen? A. Yes.

Q. Is that the same James A. Allen as the defendant in this present proceeding? A. Yes.

Mr. Stocking: We'll offer in evidence the certified copy of the judgment of the Western District of [928] Washington, Northern Division.

Mr. Emigh: No objection.

The Court: Exhibit 121 admitted. Let me see it, please.

(Whereupon, Plaintiff's Exhibit No. 121 for identification was admitted in evidence.)

(Whereupon, Mr. Stocking read portions of Plaintiff's Exhibit 121 to the jury.)

Mr. Stocking: At this time I'd like to re-offer 116 and 117 which were the subject of some discussion and I believe the court took them under advisement.

The Court: How about 116 and 117?

Mr. Emigh: Have you got a copy of these?

The Court: Is there objection to exhibits 116 and 117?

Mr. Emigh: With the understanding we're to be furnished copies of them so we can make an examination of them——

(Testimony of Elwood V. Denney.)

The Court: It is my understanding that at least one of those exhibits in part is based upon records that is not identified or admitted.

Mr. Stocking: Just a moment, here; no——

The Court: It is my recollection that Mr. Denney made mention of some brokers' records.

Mr. Stocking: He was referring to the records which [929] were identified as exhibit 115, as not having been admitted.

Mr. Emigh: I think the Court reserved the ruling on 116 for the reason it was based in part on exhibits identified but not admitted in evidence, if I am not mistaken. Now, in that regard, if that is correct and if those exhibits are identified and in court, why, that objection would be withdrawn. I'm not sure whether that is the state of facts or not.

The Court: I reserved ruling; I didn't reject the exhibits, I just reserved ruling?

Mr. Emigh: I think that is true.

Q. (By Mr. Stocking): Will you look at those and tell us whether or not 116 and 117 are based on records which have been identified here in court as exhibits? A. Yes, they are.

The Court: They're based on records identified; there's no objection on that ground.

Mr. Emigh: Your Honor, as to the exhibit 116, the defendant has no objections except that the defendant does not waive any objections heretofore made as to the separate exhibits or any thereof

(Testimony of Elwood V. Denney.)

forming a source of the information purported to be set forth in this schedule.

The Court: Exhibit 116 is admitted; there's no objection. The defendant does not waive other objections. [930]

Mr. Emigh: The same statement as to 117.

The Court: Exhibit 117 is admitted. There's no objection to it. The defendant does not waive objections to other exhibits.

(Whereupon, Plaintiff's Exhibits Nos. 116 and 117 for identification were admitted in evidence.)

* * *

[931]

(Short recess.)

(All parties present as before, and the trial was resumed.)

Mr. Stocking: I want to make a brief reference to these last two exhibits.

The Court: All right.

(Whereupon, Mr. Stocking read portions of Plaintiff's Exhibits 116 and 117 to the jury.)

The Court: You may proceed with cross-examination.

Cross-Examination

By Mr. Emigh:

Q. Mr. Denney, I think in your direct examination and to qualify yourself for the purpose of testifying as to summaries of records here you gave us an outline that you were an accountant?

(Testimony of Elwood V. Denney.)

A. Yes, sir.

Q. A certified public accountant, or just an accountant?

A. A licensed public accountant.

Q. Sir?

A. A licensed public accountant in the State of Washington.

Q. And you had had some bank experience?

A. I have.

Q. A number of years in a bank?

A. Seven.

Q. What were your duties in the bank generally, just roughly?

A. I was in the Seattle Branch of the Bank of California, a comparatively small bank at that time, and performed duties in practically all departments during the seven years.

Q. And that's true in those small institutions, a man generally works all over the place?

A. That's right.

Q. And you became quite familiar with handwriting at that time?

A. I beg your pardon?

Q. You became quite familiar with handwriting?

A. Yes.

Q. And since then as an investigator for the Securities and Exchange Commission you have made it one of your duties to examine handwriting and examine the genuineness of it, haven't you?

A. Well, incidentally, I'll say.

(Testimony of Elwood V. Denney.)

Q. What's that?

A. Incidentally, is all.

Q. Yes, it's one of the things; you're very frequently encountered with documents which you're not sure are [933] genuine, and for that purpose you've made a study of how to determine whether a signature is or is not genuine, when you have a genuine signature?

A. I have not made a study of it. I acquired a little experience through my work, is all, and at times in an amateurish way I have made comparisons. I don't profess to be any expert.

Q. You testified on direct examination something about an examination of the Independence; that's the Independence Lead Mines Company, I believe?

A. Yes, sir.

Q. Yes. Now, there's an exhibit, Plaintiff's Exhibit 95. I'll ask you if that was a document that came into your possession as a record of the Independence? A. Yes.

Q. And I'll hand you Defendant's Exhibit M, and ask you if that came into your possession in the same manner as the other?

A. No, it didn't.

Q. And Defendant's Exhibit M came into your possession some time later than Plaintiff's Exhibit 95, is that correct?

A. Would you let me have that question again?

(Whereupon, the reporter read the last previous question.)

(Testimony of Elwood V. Denney.)

A. I hadn't seen M before it was presented in this court. [934]

Q. M?

A. Yes. This is the copy which was put in evidence during the administrative hearings before the Securities and Exchange Commission.

Q. You didn't have possession of Defendant's Exhibit M? A. I don't recall it.

Q. Did you ever see it?

A. I don't recall seeing it before it appeared in this courtroom.

Q. At no time? A. No.

Q. Did you make any study to determine the genuineness of a signature on one of these exhibits?

A. Why, it wasn't necessary, because this copy was handed to us during the administrative hearing by Mr. Keane. It was without signatures on it. It was blank, and he in our presence at the hearing wrote the names in which he said appeared on the original copy.

Q. At that time you didn't know about the original copy, is that right?

A. Mr. Keane said that there was an original copy, as I remember it.

Q. And when did he first tell you that?

A. I don't recall that.

Q. Well, was it before this hearing when he testified as to [935] the Plaintiff's Exhibit 95?

A. I don't recall that. One reason is that I personally placed little importance upon that note——

(Testimony of Elwood V. Denney.)

Q. Yes?

A. ——and I had given it no thought further for quite some time, until the matter was brought up by the defendant in this courtroom.

Q. Did you ever discuss this note with the defendant Allen?

A. Yes, Allen was told about the note.

Q. Yes, and you discussed it with him?

A. Yes, I talked with Mr.——

Q. When was that?

A. That was I believe shortly after Mr. Keane presented it in evidence; was that March, 1945?

Q. Mr. Keane—— A. Yes.

Q. ——presented it in evidence in what case?

A. Presented the duplicate, the copy, at the administrative hearing during the investigation.

Q. Well, then, you discussed the original after that; after Mr. Keane placed the copy in evidence before the S.E.C. on March 19, 1947, you discussed the original with Mr. Keane, didn't you?

A. Yes, I remember having some conversation with Mr. Allen——

Q. Now, at that time—— [936]

A. ——about this note.

Q. And at that time you knew about the signature on the note, didn't you?

A. Mr. Allen, as I recall it, was told by me that Mr. Keane had written his name on the note at the administrative hearing.

Q. Had written Allen's name? A. Yes.

(Testimony of Elwood V. Denney.)

Q. Is that the extent of your conversation with Mr. Allen, Mr. Denney?

A. Well, I know I recall very definitely at the time that Mr. Allen was incensed about it, and accused Mr. Keane of forging his name.

Q. Yes. Now, when you do encounter a signature which you do not think is genuine, what steps do you take to determine whether it's genuine or not?

A. I placed no importance on it at all.

Q. You're not answering my question. When you encounter a signature which you do not think is genuine, what steps do you take to determine whether it is genuine or not?

A. Well, I haven't had occasion to do that.

Q. Have you any small instrument or anything that you use to determine the slope of letters or anything of that kind?

A. I have not.

Q. Have you anything which you use to measure? [937]

A. I have not.

Q. Have you a nail file that you carry around with you?

A. No, sir.

Q. Have you nothing of that kind at all?

A. No, sir.

Q. Did you ever discuss with Mr. Allen before the trial of this case at any time this signature, and the fact that Mr. Allen didn't put periods in his signatures, and this signature had periods in it?

A. I traced Mr. Allen's name on that copy of the note with something, I don't know what it was,

(Testimony of Elwood V. Denney.)

at the time, and showed it to him, I believe. Now, this is hazy in my mind.

Q. All we want is your recollection.

A. Because I didn't place any particular importance on it, so it's hazy in my mind.

Q. Now, the fact is, to refresh your memory from our discussion, I'll again hand you Plaintiff's Exhibit—or Defendant's Exhibit, I beg your pardon, M for identification, and ask you to take a good look at that signature.

The Clerk: You said M for identification. It's been admitted.

Q. Yes, Defendant's Exhibit M, admitted; take a good look at that signature and state if it isn't a fact that you made a number of tracings of that signature and compared them [938] with Mr. Allen's genuine signature, and afterwards showed your tracings and the genuine signature to Mr. Allen, and also showed him or referred to this original note?

A. I recall tracings of a signature. Now, I don't recall if it was this signature or not. I know I discussed with Mr. Allen his signature. Now, if I am in error it's from lack of memory, because we didn't place any particular importance upon this thing.

Q. But you realize Mr. Allen might place quite a bit of importance on a \$60,000 note signed by somebody else with his name? A. Yes.

Q. That might not appear important to you in

(Testimony of Elwood V. Denney.)

your investigation, but you can understand why it would be important to him, can't you?

A. Sure; sure.

Q. Now, your recollection is that you did trace a name on a note?

A. I recall a tracing and showing it and talking with Mr. Allen, now that you refresh my memory, but I don't know if it was traced off the original or not. Now, I don't recall.

Q. As a matter of fact, Mr. Allen had a good deal of trouble picking out, out of three or four samples which you gave him, his own signature which you gave him? You acquired [939] for demonstration purposes a number of signatures, and Mr. Allen had a great deal of difficulty for a few moments in picking out his own?

A. Where was this?

Q. I imagine it was in Spokane; in Mr. Allen's office, was where this conversation occurred. Do you remember that?

A. Well, I've been to Mr. Allen's office many times.

Q. Yes.

A. And talked with him during the course of this investigation and for other purposes.

Q. But you do remember tracing this?

A. Yes, I do remember tracing it, as you refresh my memory. I don't recall whether it was a tracing of this signature or the tracing of the duplicate.

Q. Do you remember when that was?

(Testimony of Elwood V. Denney.)

A. No, I don't. It must have been shortly after that administrative hearing, because that's just after the investigation started——

Q. Yes.

A. And that's when this was put into evidence in the S.E.C. hearing.

* * *

[940]

Q. (By Mr. Emigh): I want to refresh your memory a little further on this. Don't you remember that in Mr. Allen's office sometime early in 1947, that you had possession of this note or the note was there, either you brought it there or had had possession of it, and you discussed this signature with him, and as you say, he was incensed, said it wasn't his signature, and you said "Well, I didn't think it was" and you showed him four or five simulations of his signature, and one genuine signature of his which you had, and you asked him to pick out which one was genuine, and which was not?

A. I recall a conversation with Mr. Allen about his signature, that's admitted.

Q. And do you recall that before he could pick it out——

A. No, I don't.

Q. Let me finish. Before he could pick it out, this may help to refresh your memory too, you said "Well, I'll show you which one is yours" and you pointed to one, and says "I can tell that that is yours, because you don't ever put a period after your name or after your initials" and he laughed and said "I never noticed that before" and you

(Testimony of Elwood V. Denney.)

pointed out that when Keane had signed his name to [941] this, that he had put periods after those letters. Now, think of those words I've asked you, and see if that isn't true, and refresh your memory.

A. Let me see a copy of his signature on something.

Q. I've picked at random one check.

A. Yes, there are no periods on this.

Q. Sir?

A. There are no periods on this.

Q. No.

A. I don't recall the details of it.

Q. But you do recall the conversation?

A. Yes, I do recall that I conversed with him.

Q. And you do recall that Mr. Allen was very incensed about his signature on there?

A. I do, and I recall that he was incensed, and said that Mr. Keane had forged his signature.

Q. Do you recall the further fact that in the examination before the Securities and Exchange Commission Mr. Keane very promptly, in reference to this note, volunteered without request on your part, or a question in that regard, to write on this exhibit, Plaintiff's Exhibit 95, what he stated to be the signatures on the original note which is Defendant's Exhibit M?

A. The record so shows.

Q. Yes, and you hadn't asked him any questions? [942]

A. I asked no questions at that——

(Testimony of Elwood V. Denney.)

Q. Hadn't you consulted with him before about that? A. I don't recall.

Q. You had consulted with him before he went on the stand? A. I did not, no.

Q. At no time?

A. I took no part in the interrogation of Mr. Keane at the hearing——

Q. Did you attend the hearing?

A. ——in connection with this matter. I was present, yes.

Q. Had you talked with him before?

A. Yes.

Q. Had you talked with him before about the Independence? A. Yes.

Q. Had you talked with him before about this note which was in the records of the Independence?

A. I believe Mr. Keane produced the note in Wallace during the investigation prior to this.

Q. That's right.

A. I believe that he did.

Q. That's correct, he produced it, that's right.

A. Yes, as I recall it he produced it along with other material which was put in evidence during the administrative hearing.

Q. And you subpoenaed the note which he had and had showed [943] you?

A. The Commission subpoenaed it, yes.

Q. He was subpoenaed? A. Yes.

Q. And in place of the original note he produced that in answer to the subpoena, the copy, isn't

(Testimony of Elwood V. Denney.)

that correct? That's correct, isn't it, Mr. Denney?

A. During these administrative hearings, if I may explain, the investigator ordinarily takes little part in it. The questioning and the procedure is handled by attorneys for the Commission. You'll notice that in the portion that was read here yesterday I wasn't mentioned at all.

Mr. Emigh: Well, I don't believe that quite answers the question. I presume we should have the reporter read the question, and then see if the witness can answer it.

(Whereupon, the reporter read the last previous question.)

A. I don't recall.

Q. (By Mr. Emigh): Well, he at that time had the original, didn't he? A. He must have.

Q. Yes, and he at that time brought the copy with him, didn't he?

A. Yes, he produced the copy. [944]

Q. And he was under subpoena? A. Yes.

Q. And it was a subpoena duces tecum, in other words, you subpoenaed his records?

A. I believe so.

Q. Then the fact is Keane had the original note, his records were subpoenaed, and he produced the copy, and without any questions being asked, volunteered and wrote the name J. A. Allen and the name F. C. Keane, and stated "That's the signatures on the original note" or words to that effect; that's all true, isn't it?

(Testimony of Elwood V. Denney.)

A. I don't recall further than his producing this copy and the refreshment of my memory by reading the record as it was read here yesterday.

Q. But he did sign it there, didn't he?

Mr. Stocking: I think we'll object to any further questions along this line as improper cross-examination and repetitious.

The Court: Sustained.

Q. You did commence your examination of the Lucky Friday and the Pilot by first examining the Independence? A. Yes.

Q. Yes, and you stated to the jury here yesterday that it was the duty of a registered corporation, a corporation whose securities was registered with the S.E.C., to give an [945] annual statement to the S.E.C., is that right?

A. Yes. I testified that this morning.

Q. And the Independence in 1943, were you acquainted with the Independence, the corporation so known? A. Yes.

Q. Did you know that at that time F. C. Keane was the alter ego, the whole corporation, practically, he had absolute control of it, didn't he?

A. I didn't know it at that time.

Q. You do know it now, though, from your examination?

A. Oh, yes, I found out that in 1946.

Q. You found that out in 1946? A. Yes.

Q. How is this annual examination handled each year? Do you go through the records to see who has or has not complied?

(Testimony of Elwood V. Denney.)

A. No, the Regional Office doesn't have that function. All registration statements are filed with our head office in Washington, D. C. It was reported to us from the registration Division that Independence Lead had not filed its annual reports for 1943, 1944 and 1945, and we were asked to contact the proper officers of the corporation to inquire as to why the filing had not been made, and I was asked to do that when I went to Wallace.

Q. And did that occur in 1943?

A. No, that occurred in, I think the latter part of '46, or [1946] sometime in 1946.

Q. You weren't requested to check up on these filings for four years after they became delinquent, is that the testimony, or three years?

A. That's right.

Q. What time in 1946 did that—

A. I don't recall. The records would be in our Commission files, and I don't have them with me.

Q. That would be sometime after April, though, I take it; you stated that filing was due in April?

A. Probably the summer or early fall of '46; I don't recall.

Q. And how long did it take you to get the records of the Independence, then, the filing?

A. I recall talking to Mr. Keane about these annual statements two or three times on occasions that I went to Wallace and inquired as to when they would be filed. It seems to me that early, very early, in 1947 I advised Mr. Keane that if the filings

(Testimony of Elwood V. Denney.)

were not made within a short time, the Commission might take action against him and the company for failure to comply with the requirements.

Q. Did they ever comply? A. Yes.

Q. What year?

A. In '46—no, '47; complied with it in 1947, and prepared the—Mr. Keane employed Mr. Randall to make the audit, and [947] the 1943, 1944 and 1945 reports were prepared as the audit for the successive years was completed, and they were then filed with the Commission.

Q. That then took approximately a year to get Mr. Keane to give you an annual report on that company, didn't it?

A. Well, I don't recall, I don't have the registration statements available and I don't recall what the filing dates were, but it seems to me that the reports for the years of '43 and '44 and '45 were made in the late spring or early summer of 1947, and the 1946 report was filed possibly in the late summer of 1947; now, that's just the best of my recollection.

Q. And what action was taken immediately after that report was filed?

A. What do you mean by action?

Q. Well, what if anything did you do in relation to the Independence Lead Mines Company or the officers thereof?

Mr. Stocking: I think I'll object again on the

(Testimony of Elwood V. Denney.)

ground that it's improper cross-examination as to the reports being filed.

The Court: No; some of the cross-examination was not proper and I sustained the objection, but I think what he's done as to the Independence is proper; he testified he investigated it.

Mr. Stocking: I meant as to filing reports. [948]

The Court: Objection overruled.

Mr. Stocking: It is not the best evidence as to the filing of any reports.

The Court: This is cross-examination.

Mr. Stocking: There's no direct testimony about the filing of any reports.

The Court: I recognize that.

A. (Witness): These annual reports are filed with our head office in Washington, with a copy of the filing to the Spokane Stock Exchange. If I recall correctly, when the 1943 report was filed I went to the Exchange and looked at its copy. I did the same thing when the 1944 and 1945 reports came along. In those reports I noticed that there was an indebtedness to Independence Lead by Montana Leasing Company. The first year it was some \$24,000. The next year the amount had grown. In 1945 it had become a considerable amount. I got inquisitive about the matter, took it up with the Regional Administrator, we discussed it at the office, and he suggested to me that I look into it to see who the Montana Leasing Company was and what this indebtedness, how it arose, and it was

(Testimony of Elwood V. Denney.)

during that inquiry into that indebtedness that I discovered that Lucky Friday Extension and Pilot funds had passed into the hands of Montana Leasing Company. That was the beginning then of the investigation of the diversion of [949] funds of Lucky Friday Extension and Pilot.

Q. Now, in relation to the Independence Lead Mines I'll ask you whether or not—you examined that corporation, didn't you, you examined its records?

A. No, I couldn't say that I did examine the records.

Q. Well, didn't you state, the first thing you told us today, that it began with an examination of the Independence Company?

A. I inquired into, as I stated a few moments ago, I inquired into this indebtedness by Montana Leasing to Independence Lead, which did not constitute an audit or an examination of the records of Independence Lead. It amounted to an inquiry.

Q. What did you have to do to examine and find out about these transactions?

A. I beg your pardon?

Q. What kind of an examination did you make to find out about these?

A. I made an inquiry from Mr. Keane and Mr. Randall. Mr. Randall was the one who made the audit.

Q. Did you examine Mr. Randall's audit?

A. Yes, I talked with Mr. Randall and examined

(Testimony of Elwood V. Denney.)

some of his working papers in respect to those items to see what they were.

Q. And you talked with Keane? [950].

A. Yes, I talked with Mr. Keane.

Q. And the upshot of your talk with Keane was as to the Independence, now, that he was in a bad position with the S.E.C. and subject to prosecution, isn't that true?

A. What do you mean by that, and for what?

Q. I didn't say what; I said he was in bad shape and subject to prosecution at that time, in the Independence?

A. I don't recall that.

Q. You don't recall that, but you may have?

A. The only thing that I recall, as I mentioned a few moments ago, that if the annual reports weren't filed the Commission might take some action to compel their filing, which of course would probably not be prosecution.

Q. As a matter of fact, when you got this audit did you look at it?

A. I never got the audit.

Q. You never got the audit; well, when you talked with Mr. Randall about the audit did he tell you what the audit showed?

A. Surely. What I meant, I never got the audit, he didn't give me——

The Court: I'm interested in something. Have any of the diversions against the Pilot or Extension been charged as against the Independence?